1948

File No. S. Can 1/48

Legal DEPARTMENT

A BRANCH

Subject:— C.S. No. 19 47

1) Anant Rambhat Yellapurkar --Plff.

Versus

1) Hon. The Mamlatdar of Sirsi -- Defts.
C.S No. 2 of 47 — Claim Rs 1,000/-

1) Annapurnabai W/o Late Bala Bhatta --Plff.

Versus

1) The Mamlatdar of Sirsi -- Defts.
C.S. No. 3 of 47 — Claim Rs 100/-

1) Vithal Sadashiva Degalli -- Plff.

Versus

1) The Mamlatdar of Sirsi -- Defts.
Claim Rs 100/-

P.89/E

File No. S/Canara 1/48

Std. Sectt. Slip 24-A—1625—50-6-48—5

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V/s

The Mamlatdar of Sirsi ..... deft.

Claim Rs 1,000

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Civil Suit No. 3 of 1947

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V/s

The Mamlatdar of Sirsi — deft.

Claim Rs. 100/-

For Rs. 1,000 as damages for the alleged malicious prosecution and two contending that part of the stocks of Rice and paddy found in plff's house belonged to them

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Civil Suit No. 1 of 1946. 1 5-47

In the Court of the Civil Judge, (S.D.) Karwar.

Anant Ramabhat Yellapurkar, age 41, Brahmin agriculturist of Yellapur.) Plaintiff.

against.

Rama Sanu Naik, age 44, Komarpant, Mamlatdar Sirsi.) Defendant.

Claim Rs. 1000/-.

Plaintiff begs to submit as follows :-

1. From March 1944 to February 1945 defendant was Mamlatdar of Yellapur. Plaintiff is an agriculturist of Yellapur paying assessment of about Rs. 300/- to Government. He was appointed as social worker for Yellapur by the Collector of Kanara and has been doing public work for over five years. In his capacity as social worker Plaintiff had to point out illegalities committed by defendant in the course of his duties as Mamlatdar. Defendant's actions used to be criticised in the News Papers. Defendant ascribed these to plaintiff and for this reason he was illdisposed towards Plaintiff and was finding out opportunities to bring Plaintiff into trouble and harass him.

2. A notification was issued by the Collector of Kanara, in April 1944 by which persons who held stocks of over 12 bags of paddy or 9 bags of rice were to declare their stocks from 1st May in the first week of every month. This notification was cancelled on 30th August 1944.

3. In the first weeks of May and June 1944 Plaintiff had no stock above 12 bags of paddy or 9 bags of rice and therefore he was not required to give a declaration. On 30th June 1944 defendant visited Plaintiff's house and held a panchanama about the stock of paddy of Plaintiff and two other persons residing separately in his house. On that date Plaintiff was found to have about 30 (thirty) bags of paddy in stock. On the basis of this stock defendant imagined that Plaintiff must have this stock in the first weeks of May and June 1944.

4. As defendant was on the lookout to bring Plaintiff into trouble and harass him he spun out a case of nondeclaration of

stocks and also of having sold rice contrary to the notification of the Collector of Kanara though there was absolutely no evidence on these charges which were simply imaginary. Defendant as Mamlatdar rushed to the Criminal Court on 8th September 1944 with the complaint against Plaintiff to the court of the Sub-Divisional Magistrate, Karwar Division. Not satisfied merely filing a complaint though there was no necessity of verifying or attaching the stock of paddy with Plaintiff on the date of the complaint defendant maliciously and with a bad intent to harass and dishonour plaintiff got an exparte order of attachment and got attached through Police all the stock of paddy in Plaintiff's house during his absence and at night time inspite of protests of the inmates leaving nothing for his maintenance or for agricultural use. When plaintiff protested against this illegal attachment defendant insisted on the attachment to be continued till the disposal of the case though there was no necessity to detain the stock for the purpose of the case.

5. In the course of trial of the Criminal case by defendant against plaintiff the defendant had to admit in his deposition that he had no evidence to prove what stock of rice or paddy was held by plaintiff in the first week of May and June 1944 and that because plaintiff had more than 12 bags limit on 20th June 1944 he had filed the complaint. Defendant also could not prove by evidence the other charge of sale of rice. It was thus clear that defendant filed a false and malicious complaint against plaintiff merely to dishonour and harass him to satisfy defendant's grudge.

6. On account of the criminal case filed by defendant the plaintiff had to move to different places when the case was taken up and he could not attend to his agricultural and other important avocations. The trial was to be prolonged further to the great detriment of plaintiff. Therefore soon after the prosecution evidence was over plaintiff approached the District Magistrate and pointed out that from the evidence already recorded there was no case at all against him and further

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harassment to him should be stopped by ordering the withdrawal of the case. The District Magistrate accordingly ordered the withdrawal of the case and plaintiff was acquitted on 29th September 1945.

7. The Criminal case was launched by defendant against plaintiff with the full knowledge that it was false and that he could not support it by evidence. The case was filed maliciously as a result of the deep ill-feeling of defendant towards plaintiff with the only object of harassing plaintiff and putting him to loss and dishonour. The bad intentions of the defendant were further clear from his obtaining an ex parte attachment of all paddy in plaintiff's house and opposing its release till the last with the result that the paddy was spoiled and plaintiff got only a small sum by its sale to Government.

8. Defendant has therefore rendered himself liable to plaintiff for damages for filing criminal case maliciously and subjecting him to various indignities and loss though defendant himself a Mamlatdar and Magistrate knowing full responsibilities of his position and actions knew full well that he had no legal evidence to prove the charge. There was no reasonable and probable cause to file the complaint. Plaintiff therefore files this suit against defendant to recover damages for the false and malicious prosecution against him. The cause of action for this suit ~~xxxxxx defendant xxxxxxxxx xxxxxxxx

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case may require.

I, Anant Rambhat Yellapurkar hereby declare that the contents of the above plaint paras Nos. 1 to 10 are true to my knowledge.

Signed at Karwar on 28th November 1946.

Presented on 28th November 1946.

Pleader for Plaintiff.

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Civil Suit No. 2 of 1946.

In the court of the Civil Judge, S.D. Karwar.

Annapoornabai kom Dasa Bhatta, age 65, agriculturist, Brahmin of Yellapur.) Plaintiff.

against.

Rama Sanu Naik, age 44, Komarpant, Mamlatdar of Sirsi.) Defendant.

Claim Rs. 100/-.

Plaintiff begs to submit as follows :-

1. Plaintiff holds lands in Yellapur paying an assessment of Rs.40/-. She has obtained a decree for maintenance in the Civil Court of Sirsi against her nephew Mr. A.R. Yellapurkar. As she has a right of separate residence in the family house she stays and cooks in a separate part of the house and keeps per haddy and rice spearately. This was known to the defendant in the capacity of Mamlatdar of Yellapur. On 20th June 1944 when defendant came to verify the stocks of different persons in the town, he found that Plaintiff was in possession of five bags of rice of heap measure and this was recorded by the defendant in the Panchanama made by him. This stock of rice was kept by the plaintiff for her personal use and also to advance to her tenants who need the same during cultivating season.

2. On 8th September 1944 defendant sent police officers at night time to the house of Mr. A.R.Yellapurkar and got attached all the paddy and rice in the house including that which belonged to Plaintiff which was then three bags of rice of heap measure. Mr. Yellapurkar was absent at the time of the attachment and inspite of Plaintiff's protest not to attach at night time and during the absence of the owner of the house defendant's man one Hosalkar insisted on the attachment. As defendant knew full well that Plaintiff was living separate and all her rice was taken away he was pleased to issue ration card to Plaintiff the next day.

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3. There was no case of any sort against Plaintiff and still her rice was illegally taken away. On enquiry Plaintiff found that in a criminal case filed by the defendant against Mr. Yellapurkar out of spite, he got the whole stock in the house including Plaintiff's in order to harass Plaintiff because she was a relation of Mr. Yellapurkar. The malicious and bad intention of defendant was further clear from the fact that when Plaintiff preferred her claim, defendant put up false pleas saying that the rice belonged to Yellapurkar and not to Plaintiff contrary to Panchanama recorded by him on 20-6-1944.

4. Ultimately Plaintiff's rice remained in court till for over a year till it was released to her by the Order of the Sub-Divisional Magistrate, Karwar Division on 29-9-1945. The rice having rotten in the meantime it had to be sold to Government at great loss. The value of the rice at the time of attachment by heap measure was Rs. 128/- per bag and value thereof by cut measure at the time of the release was Rs. 128/-. But the Mamlatdar of Yellapur gave her only Rs. 107-7-6 after deducting the cleaning, wastage and other charges.

5. Thus Plaintiff who had nothing to do with the Criminal case against Mr. Yellapurkar was maliciously put to loss by defendant by getting her rice seized and detained for over a year and has thus rendered him liable in damaged to Plaintiff. Notice was given to defendant under section 80 of the Civil Procedure Code to pay Plaintiff damages. The notice was received by the Plaintiff on 28th September 1946. Plaintiff therefore files a suit for damages against defendant. The cause of action arose at Karwar on 29-9-1945 within the Jurisdiction of this court. Hence this Court has jurisdiction to entertain this suit.

6. Plaintiff therefore prays for a decree against the defendant for damages of Rs.100/- for the malicious taking away Plaintiff's rice and detention thereof untill it was spoiled. Hence the claim for damages is ..... Rs. 100-0-0,

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cost of suit under the release may also be awarded to Plaintiff from the defendant.

I, Annapoornabai kom Dasa Bhatta of Yellapur do hereby declare on solemn affirmation that the contents of the above plaint paras Nos. 1 to 6 are true to the best of my knowledge and belief.

Signed at this th day of November 1946.

Presented on 29th November 1946.

Pleader for Plaintiff.

Civil Suit No. 3 of 1946. 11-19

In the Court of the Civil Judge,
(Senior Division) Karwar.

Vithal Sadashiva Deonalli, age 36, Brahmin Agriculturist of Yellapur. } Plaintiff.

against.

Rama Sanu Naik, age 44, Komarpant, Mamlatdar of Sirsi. } Defendant.

Claim Rs. 100-0-0.

Plaintiff begs to submit as follows :-

1. Plaintiff is a landholder of Yellapur taluka owning lands assessed at Rs.90/-. As he has no house of his own he was staying in the house of Mr. A.R.Yellapurkar, a relation of his separately with his mother. He also used to bring paddy and rice separately in the house. Defendant knew these facts full well. On 20th June 1944 when defendant in the capacity of Mamlatdar of Yellapur was verifying stocks, he visited the house of Mr. Yellapurkar and noted separate stocks of rice and paddy belonged to Plaintiff.

2. On 8-9-1944 defendant sent police Officers and his man one Hosalkar who was also present at the time of panchanama on 20-6-1944 and suddenly at night time attached all the stock of paddy and rice including Plaintiff from the house of Mr.Yellapurkar inspite of protest and during his absence. On enquiry as to this handed conduct of Defendent it was found that in a criminal complaint filed out of spite against Mr.Yellapurkar by the defendant he had obtained an exparte order of attachment of Mr.Yellapurkar's stock and taking undue advantage of this order he also got attached Plaintiff's separate stock of 2 bags and 56 seers of rice although there was no case against Plaintiff nor any order to attach Plaintiff's any rice. It was clear that defendant got Plaintiff's rice also attached maliciously as Plaintiff was a relative of Mr.Yellapurkar. When Plaintiff put in his claim for his rice in the Sub-Divisional Magistrate's Court defendant falsely and maliciously disputed the Plaintiff's claim inspite of his Panchanama of 20th June 1944 in order

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order to harass and put Plaintiff to loss. On account of this high handed and false pleas of the defendant Plaintiff's rice continued under attachment for over a year until it was ordered to be released to him on 29th November 1945. As the rice was rotten it was purchased by Government and rice worth Rs.104/- when it was attached and was worth Rs.104/- by out measure at Government rates on the date of release fetched only Rs.84-9-6 after deducting wastage and other charges.

3. Plaintiff has therefore been put to heavy loss on account of the malicious and illegal action of the defendant in taking away his rice without any cause and with full knowledge that it belonged to Plaintiff and was not the subjec matter of the criminal case and has thus rendered himself liable to Plaintiff for damage. Plaintiff therefore issued notice to the defendant under section 80 of the Civil Procedure Code claiming damages for his illegal actions and loss caused to Plaintiff. Defendant received notice on 28-9-46. The cause of action of this suit arose at Karwar on 29-9-1945, when order for release of Plaintiffds rice was passed by the Sub-Divisional Magistrate, Karwar Divisiona.

4. The cause of action arose at Karwar and hence this Court has jurisdiction to entertain this suit.

5. Plaintiff therefore prays for a decree against defendant for ..... Rs. 100-0-0, on account of the loss caused to Plaintiff by the malicious action of the defendant, costs of suit and other reliefs may also be ordered to Plaintiff from defendant.

I, Vithal Sadashiva Deonalli of Yellapur, hereby declare on solemn affirmation that the contents of the plaint xxxxxx paras Nos. 1 to 5 are true to best of my knowledge and belief.

Signed at Karwar on 28th November 1946.

Presented on 29th November 1946.

Pleader for Plaintiff.

Report under rule 118 of Law Officers Rules.

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Rule 118(1).

i) No. of suits	1, 2 & 3 of 1947.
ii) Date on which & the court in which it was instituted.	28, 29, and 29th of November 1946 in the court of the Civil Judge, S.D. Karwar.
iii) The name of all the parties.	Suit No.I : Anant Ramabhatta Yallapurkar Vs. Rama Sanu Naik Ex-Mamlatdar of Yellapur now Mamlatdar of Sirsi Suit No. II : Annapoornabai kom Dasa Bhatta. Vs. Rama Sanu Naik address as Suit No. I. Suit No. III. Vithal Sadashiva Deorelkar Vs. As in Suit No. I.
iv) The amount of the value of the claim	Suit No.I. R.1000/- Suit No.II. R. 100/- Suit No.III. R. 100/-
v) Date fixed by the court for hearing.	These were fixed on 11-2-47 but the same has been got adjourned till 20-6-47 for taking the written statement of the defendant
vi) Whether notice of the action has been given under section 80 Civil Procedure Code & if so date of delivery of such notice.	Yes. on 28-9-1946.

Rule 118(2)(a) of the Rules. The plaints are in English. Hence submitting a copy of the Plaints in the regional language does not arise.

Rule 118(2)(b). Copies of the plaint are attached. The several points raised in the plaints have been dealt with on paras prepared under rule 118(2)(c)(i) and (iii) of the Law Officers Rules.

Rule 118(2)(c)(1) of the Rules. 9.1 25 217

The plaintiff in suit No.I, Mr.Anant Rama Bhatta Yellapurkar was bound to give a declaration of stock of paddy and rice held by him as per District Magistrate's Notification No.4905 dated 28-4-1944. The stock held by the above plaintiff was checked by the defendant, Mr. R.S.Naik, as Mamlatdar of Yellapur on June 20, 1944 and it was found that the said stock exceeded the allowed quantity of 25 maunds. On 8-9-1944 the Mamlatdar moved the S.D.M. K.D. to issue a search warrant for the attachment of the stock in the possession of plaintiff in suit No.I, Mr. Anant Rama Bhatta Yellapurkar. Accordingly a search warrant was issued by the S.D.M. K.D. on the very day. Further the S.D.M. directed the Mamlatdar to issue necessary ration cards to the plaintiff. In persuance of the said order for search the Mamlatdar got attached 14 bags of paddy and 15 bags of rice from the house of Mr. Yellapurkar.

Page 25, File No.I.

Page 71, File No.I.

Page 23, File No.III.

Page 49, File III.

Thereupon, the plaintiffs in suit Nos. 2 & 3 and Mr. Yellapurkar submitted applications to the S.D.M. K.D. on September 10, 1944 ~~xxxxxxx xxx xxx xxxxxxx~~ and September 12, 1944 praying for the release of the attached stock. The plaintiffs in suit Nos. 2 & 3 alleged that some bags of rice attached by the Mamlatdar belonged to them and hence they are not liable for attachment. Mr. Yellapurkar alleged that the bags belonged to him and that they were illegally attached. On enquiry the S.D.M. K.D. was of opinion that the property in question has been attached in a criminal case from the house of Mr. Yellapurkar against whom a complaint has been filed by the Mamlatdar and that as the property was concerned in a criminal case its disposal could not be considered until the

Pages 27, 31 & 35, File No. III.

Page 75, File III.

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until the disposal of the case . Accordingly he passed an order on December 1, 1944. 23

Being dissatisfied with the aforesaid orders the plaintiffs in suits Nos. 2 & 3 filed a reversion application, while Mr. A.R.Yellapurkar filed a companion criminal revision application in the Sessions Court at Karwar. However, the learned Sessions Judge, decided that the attachment affected by the S.D.M. could not be said to be illegal, and the applications were rejected.

Page 107, File III.

The suits have arisen out of 2 complaints filed by Mr. R.S.Naik as Mamlatdar of Yellapur against Mr. A.R. Yellapurkar, plaintiff in suit No.I, with respect to offences under the D.I. Rules, in the court of the S.D.M. K.D. Kanara. The S.D.M. K.D. after hearing some evidence in the case held that a prima facie case was made out against Mr. Yellapurkar, and framed a charge against him. But, the case was subsequently withdrawn under the orders of the District Magistrate.

Pages 69 & 71, File No.I.

Page 107, File No.I.

Page 187 File No.III.

On 28-9-46 Mr. R.S.Naik, ex-Mamlatdar of Yellapur and now Mamlatdar of Sirsi, received three notices of suits as referred to above and the present 3 suits were instituted in the court of the Civil Judge, S.D. Karwar on 28, 28 and the 29th of November 1946, respectively for the damages alleged to have caused to them by Mr. Naik, as Mamlatdar of Yellapur.

Pages 1, 3 & 5 File No.IV.

Pages 19, 27 & 35 File No.IV.

Rule 118(c)(iii).

Grounds of defence.

The matters in dispute have arrisen out of 2 complaints filed by Mr. R.S. Naik as ~~Naik~~ Mamlatdar of Mellapur against Mr. Anant Rama Bhatta Yellapurkar before the S.D.M. K.D. Kanara with respect to offences under the Defence of India Rules. The said complaints which were amulgamated into one case by the S.D.M. K.D. were filed by Mr. R.S. Naik in his capacity as a Public servant under Rule 130 of the D.I. Rules, and he as Mamlatdar of Yellapur entrusted with the duty of seeing that the orders of Government were observed and obeyed by the people filed the complaints in the discharge of his duties as a public servant. It appears from the Record of the case that paddy and rice far in excess of the scheduled quantity were actually found in the house of Mr. Yellapurkar and that there was also evidence in the case that he had disposed off the same by illegal sale in contravention of Government orders. In the course of the trial his defence was that the rice and paddy, a major portion of it, belonged to his 2 relatives, the plaintiffs in suits Nos., 2 & 3, who were actually staying in the house. The accused complains in the present suit that the Mamlatdar of Yellapur Mr. R.S.Naik was actuated by malice against him and that the case was false and that the order of attachment passed in the case was not justified. It would appear from the judgment of the Sessions Court, para 9, ~~the~~ in criminal Revision Application No. 1 of 1945 of the Sessions Court that the attachment affected by the S.D.M. in the above case cannot be said to be illegal. The other 2 persons who have also asked for damages from Mr. R.S.Naik are the relatives of Mr. Yellapurkar and were actually living in the same house at the time of the said attachment, and now seem to have been put up by Mr. A.R. Bhat, Yellapurkar to claim the paddy and rice attached, as theirs. The said applicants had applied to the S.D.M. for the release of the attached property but the

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but the said Magistrate passed an order that the said property being the subject matter of the case against Mr. Yellapurkar could not be released before the criminal case was finally disposed off. Against this order the persons had applied in reversion and had failed. However, the paddy and rice attached were released as soon as the cases were withdrawn by the orders of the District Magistrate.

It may further be seen that section 17 of the Defence of India Act may be availed of by Mr. R.S.Naik as the said section lays down that no suit or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in persuance of the Act or the Rules made thereunder. Mr. Naik seems to have set the laws in motion against Mr. Anant Ramabhatta as a public servant in good faith. He had regular investigations in this case. The excess quantity was actually found in the house of Mr. Yellapurkar though he and his relatives were attempting to prove that the said relatives and he were living separate.

Under the circumstances it cannot be said that the complaints were false and that there was not reasonable or probable cause for the same which is a main ingredient in a suit for malicious prosecution like those under reference which will have to be proved by the plaintiffs in all the three suits. It is therefore clear that the plaintiffs have no cause of action against Mr. R.S.Naik in all the three suits.

Lastly, the articles in dispute were attached on 8-9-44 and the suits for compensations on that account ought to have been filed within one year from the date of distress or from the date of seizure either under article 28 or 29 of the Indian Limitation Act. The plaintiffs in both the suits No. I & II complain of illegal seizure and the suits having been filed after more than a year from the date of seizure, both these suits are time-barred.

Details as to the damages claimed are not given in the notices. The plaintiffs do not make any specific avertment

avertment as to the nature of the damages alleged to have been suffered.

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Rule 118 (2)(d).

No documentary evidence has been relied upon by the plaintiffs. As regards defence, please vide files I, II, III & IV.

Rule 118(2)(e).

The correspondence connected with the subject matter of the suits is enclosed. (Files I, II, III & IV). The important papers connected with the suit are in English only.

Rule 118(2)(f).

Files I, II, III & IV.

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No. TR. 9054.
Office of the Collector of Kn.
Karwar, 22-5-1947.

Forwarded w.c. to the Remembrancer of Legal Affairs Bombay, for favour of necessary action.

Collector of Kanara.

Submitted through - 1) Commissioner, S.D. Belgaum.
2) Home Department, Secretariat, Bombay.

1335 FT TO

Kanara Suits Nos. 1, 2 and 3 of 1947.

These three suits are filed against Mr. S.R.Naik Mamlatdar of Yellapur now stationed at Sirsi. They arise out of the same transaction. In the first suit the plaintiff claims Rs. 1,000/- as damages for alleged malicious prosecution. The plaintiff was found by the defendant in possession of stock of rice and paddy in excess of the limit prescribed by an order of the District Magistrate issued under Rule 81(2) of the Defence of India Rules, and was therefore prosecuted under Rule 81(4). The prosecution having been subsequently withdrawn, the plaintiff was ~~permitted~~ acquitted by the Sub-Divisional Magistrate. The suit can be defended. The plaintiff will have to prove that the defendant acted without reasonable and probable cause in instituting the prosecution and also that he acted with malice.

The plaintiffs in the two other suits contend that part of the stocks of rice and paddy found in the plaintiff's house belonged to them and as it was not released in time they incurred a loss which they assess at Rs. 100/-. The attachment was however under a warrant issued by the Magistrate who rejected the plaintiff's application for release of the stock. Defendant cannot be held responsible for the loss of any suffered by the plaintiffs. Both the plaintiffs lived in the same house with the plaintiff in suit No. 1 and are his relatives and all the stocks were found in his possession. The defendant was therefore justified in assuming that the stock belonged to plaintiff.

Defence of the suits may be sanctioned on the lines of the appended brief.

The Commissioner S.D. has recommended that the grant of Legal Assistance to Mr. Naik. However, under Rule 189 G, the Law officers, the Commissioner or the Collector would be competent to issue orders for legal assistance. The Comm. may be informed accordingly

Rec 5/7/47

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Secy # D A176 at 12/7/47 12/7/47

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In the Court of the Civil Judge, Senior Division,

At Karwar.

Civil Suit No. 1 of 1947.

Anant Ramabhat Yellapurkar. Plaintiff.

versus

Rama Sanu Naik, Mamlatdar of Sirsi. Defendant.

Claim Rs. 1,000/-

Written statement on behalf of the defendant is as follows:-

1. This suit is barred under section 17(1) of the Defence of India Act. The defendant instituted the prosecution against plaintiff under Rule 81(4) in good faith. Under section 17(1) therefore the suit does not lie.

2. The defendant filed the complaint in his capacity as a public servant in good faith as he ordered by the District Magistrate who passed the order after applying his mind judiciously.

3. The defendant began to officiate as Mamlatdar from 18-3-1944. Before he took charge the defendant's predecessor had notified that stocks in excess of 9 bags of rice or 12 bags of paddy should be declared by every person, as per District Magistrate order dated 22-12-1943. The District Magistrate again published the order on 28-4-1944 During his camp at Yellapur between 25-4-1944 to 4-5-1944 he asked the defendant personally to enforce the order. Accordingly the defendant ordered all village officers to prepare a list of such persons likely to hold such big stocks and to verify them by personally visiting each house. The plaintiff's name appears in such a register. But the plaintiff neither gave a separate declaration nor signed the register after noting the stock held by him. These orders had been properly published and the plaintiff was aware of them.

4. The def plaintiff saw the defendant in June 1944 and complained that the limit fixed by the District Magistrate was too arbitrary and asked for a copy of the notification saying that he would complain against it to higher authorities. He then took a copy of the notification. He was then told by the defendant that he should not defer giving a declaration on such a ground. The plaintiff had thus wilfully avoided or failed to give the declaration.

5. On 19-6-1944 the defendant received another order from the

District Magistrate that the Mamlatdars should verify the stocks in all important villages. So on 20-6-1944 he began verifying such stock held by verious persons in Yellapur in company with ~~respon-~~ reputable ~~sible~~ panchas. It was during such an enquiry that the defendant visited the plaintiff's house and found that plaintiff was in possession of 30 bags of small variety of paddy and 1 bag of big paddy and 13 bags of rice of small variety. So a panchanama was made in the course of his official duty. The plaintiff admitted before the panchas that the 30 bags of paddy belonged to him. The stock had not been attached by the D.C.

6. The plaintiff did not give any declaration even after the panchanama at any time. But he began to get the paddy milled and there was information received that plaintiff was selling rice contrary to the District Magistrate's notification dated 29-3-1944. So the defendant had to place all the facts before the District Magistrate in the course of his official duties in July 1944. It was under the orders of the District Magistrate that the defendant filed the complaint against the plaintiff for non declaration and for selling rice. The District Magistrate passed such an order as there was justification for passing such an order from facts disclosed.

7. Before the trial commenced the Sub Divisional Magistrate ~~Kanara~~ Karwar Division ordered the Sub Inspector of Police to attach the stock in plaintiff's possession. It was so attached on 8-9-1944 when it came to light that the plaintiff then held only 15 bags of paddy and 5 bags of rice in his house. The defendant had then in his house two adults i,e. plaintiffs in Civil Suits Nos. 2 and 3 of 1947 and 3 children. Thus there was no justification for the disappearance of the vast stock found on 20-6-1944. On attachment of the stock by the P.S.I. he was immediately given a ration card and no inconvenience was caused to plaintiff. The defendant was not present at the time of such attachment.

8. The allegations made in para 1 of the plaint are denied. The defendant is not aware of the fact that the plaintiff had been appointed by the Collector as a social worker. The defendant had come to Yellapur only 3 months earlier and knew the plaintiff only as one of the local landlords. The defendant does not admit that in his capacity as a social workers, the plaintiff had to point

out or actually pointed out any illegalities committed by the defendant in the course of his duties as the Mamlatdar. The defendant was not aware that the plaintiff was the correspondent of the Kanara News and he had no reasons to ~~support~~ search the plaintiff as the correspondent. It is not true that the defendant ascribed any such reports to the plaintiff or that the defendant was ill disposed towards the plaintiff for that reason or for any other reasons. It is absolutely false that the defendant was ill disposed towards the plaintiff and was trying to find out opportunity to bring plaintiff into trouble and harass him.

9. The defendant had been found to be in possession of the whole stock mentioned above. It is true that he asserted that the rice and 1 bag of paddy did not belong to him at the time of panchanama. But under the District Magistrate's notification such a declaration had to be given by any one whether held on his own account or on account of or in partnership with any other person. The other 2 relatives (plaintiffs in civil suits 2 and 3) were his close relatives living with the present plaintiff. One was his aunt and the other relative lived with him permanently from several years. It is not true that there was no excess stock with the plaintiff in the first weeks of May and June 1944.

10. It is not true that the defendant was on the look out to bring plaintiff into troubles and harass him. It is not true that he spun out a case of non declaration and of sales contrary to the notification on imaginary grounds. The defendant had sufficient evidence to believe that the plaintiff was guilty. He launched the complaint under orders of the District Magistrate before whom the evidence had been placed and he had ordered the filing of the complaint. The defendant did not act spontaneously on his own accord but under the orders of the District Magistrate who too had applied his judicial mind while sanctioning prosecution.

11. It is equally untrue that the defendant got the stock attached maliciously or with a bad intent of harassing the plaintiff. The attachment was carried out by the Sub Inspector Police and not by the defendant himself. It was so ca under orders of the Sub Divisional Magistrate for whic

the deferdant cannot be held responsible. It is not true that the stock was attached at night. The defendant was not present at the time. All the allegations made in para 4 are false.

12. The defendant had failed to give any declaration even after the panchanama or in the first week of July. He carried on sales of rice. Hence the defendant was justified in sending a report against him on or about 12th July. Contents of para 5 of the plaint are not admitted. In the criminal case both oral and documentary evidence had been placed before the court to show that the plaintiff was actually selling rice and had got a large quantity of paddy milled. Charge had been framed on both counts as prima facie case had been made out. At that stage the plaintiff applied to the District Magistrate for withdrawal of the case and his request was granted by the then District Magistrate without assigning any reasons for such a withdrawal and without hearing the Public Prosecutor who was in charge of the case

14. The trial of the case began on 11-4-1945 and it was continued on the 12th and 16th on which day the charge was framed. It is not true that the Plaintiff had to proceed to different places and therefore could not attend to his agricultural and other important avocations,

15. Contentions made in para 7 are false. It is true that the deferdant launched the criminal case against plaintiff with full knowledge that it was false and that he could not support it by evidence. It is not true that he filed it maliciously as a result of deep ill feelings towards plaintiff with the object of harassing him or putting him to loss and dishonour. It is not true that the order of attachment was obtained exparte with any bad intention or that the defendant opposed its release. It is not true that the paddy was spoiled and plaintiff got a small sum by its sale.

16. The defendant denies his liability for any damages on any account. It is also not true that the defendant had no legal evidence to prove the charge or that it was filed without reasonable and probable cause.

17. Without prejudice to the foregoing contentions it is urged that damages claimed are excessive.

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In the Court of the Civil Judge, Senior Division,

At Karwar.

Civil Suit No. 2 of 1947.

Annapurnabai kom Dasa Bhatta ... Plaintiff.

versus

Rama Sanu Naik, Mamlatdar of Sirsi. ... Defendant.

Claim Rs. 100/-

Written statement of the defendant.

1. The plaintiff is reported to be dead. Hence the cause of action does not survive. The suit has also abated as no legal heirs have been brought on record within time.

2. This suit is barred under section 17(1) of the Defence of India Act. The defendant acted in good faith and in his official capacity as Mamlatdar of Yellapur. Hence this suit is not maintainable.

3. The cause of action has been wrongly shown in the plaint. The basis of the suit is the alleged illegal and malicious attachment effected on 8-9-1944. Hence the date of actual release of the stock is immaterial and the period till that date cannot be tacked to the cause of action., which arose on the date of such attachment itself. Hence it is barred by time.

4. The defendant admits that the plaintiff owned some lands at Yellapur but it is not admitted that she held lands assessed at Rs. 40/-. Mr. A.R.Yellapurkar managed her property on her behalf and she actually lived jointly with him. It is not true that she was cooking in a separate part of the house and that she kept her paddy and rice separately. It is not a fact that the defendant was aware of these facts.

5. When defendant went to hold panchanama on 20-6-1944, this stock in dispute was not found separately nor was the assertion made before the Panchas that plaintiff was actually cooking separately. The reference to plaintiff's claim in the panchanama was made as there was such an assertion made by the parties before the panchas. It is not admitted that this stock had been kept by the plaintiff separately for her personal use or for distribution to her tenants. Allegations in para 1 are thus denied.

6. Even if the disputed stock did belong to plaintiff it had been mixed up with A.R.Yellapurkar's stock and it was

his possession for which he was bound to give a declaration for the whole stock whether held on his own account or not. Hence the attachment was perfectly legal and not due to any malicious motive,

7. It is not true that the defendant sent the Police officers at night time to the house of Yellapurkar and got attached all the paddy and rice with any ulterior motive. The attachment was perfectly legal and therefore plaintiff's application to get it released was thrown out by the Sub Divisional Magistrate in ~~March~~ December 1944 and by the Sessions Judge in March 1945. The plaintiff had been in league with ~~him~~ A.R. Yellapurkar and has filed this suit at his instances.

8. It is not true that the attachment order was obtained to harass the plaintiff as she was A.R.Yellapurkar's relative. The attachment of the stock in A.R.Yellapurkar's possession was sought as he was found ~~to~~ selling rice illegally.

9. It is not true that plaintiff suffered any loss as alleged in paras 4 and 5 of the plaint. The plaintiff had no reason to await decision of that case or the release of the whole stock.

10. This suit as now framed is not maintainable against the defendant. It is beyond time.

11. Without prejudice to above contentions it is also asserted that the damages claimed are excessive.

Drafted by
[illegible]
Advocate
[illegible]

his possession for which he was bound to give a declaration for the whole stock whether held on his own account or not. Hence the attachment was perfectly legal and not due to any malicious motive,

7. It is not true that the defendant sent the Police officers at night time to the house of Yellapurkar and got attached all the paddy and rice with any ulterior motive. The attachment was perfectly legal and therefore plaintiff's application to get it released was thrown out by the Sub Divisional Magistrate in March December 1944 and by the Sessions Judge in March 1945. The plaintiff had been in league with ~~xxx~~ A.R. Yellapurkar and has filed this suit at his instances.

8. It is not true that the attachment order was obtained to harass the plaintiff as she was A.R.Yellapurkar's relative. The attachment of the stock in A.R.Yellapurkar's possession was sought as he was found ~~xx~~ selling rice illegally.

9. It is not true that plaintiff suffered any loss as alleged in paras 4 and 5 of the plaint. The plaintiff had no reason to await decision of that case or the release of the whole stock.

10. This suit as now framed is not maintainable against the defendant. It is beyond time.

11. Without prejudice to above contentions it is also asserted that the damages claimed are excessive.

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In the Court of the Civil Judge, Senior Division, at Karwar.

Civil Suit No. 6 of 1947,

Vithal Sadashiv Devanalli. Plaintiff.

versus

Rama Sanu Naik, Mamlatdar of Sirsi. Defendant.

Claim Rs. 100/-.

Written statement of the defendant.

1. This suit is barred ~~by~~ under section 17(1) of the Defence of India Act. The defendant acted in good faith and in his official capacity as Mamlatdar of Yellapur. Hence this suit is not maintainable.

2. The cause of action has been wrongly shown in the plaint. The basis of suit is the alleged illegal attachment effected on 8-9-1944. The date of order of release cannot be relied upon as the cause of action. It was on the date of such attachment that the cause of action arose. Hence this suit is clearly time barred.

3. The suit ~~now~~ as now framed is not maintainable.

4. The defendant admits that the plaintiff ~~has~~ owns lands in Yellapur Taluka but he does not admit that plaintiff pays Rs. 90 as assessment. It is not true that the plaintiff and his brothe lived separately in Mr. A.R.Yellapurkar's house. Plaintiff lived with him jointly in June 1944.

5. It is not true that the plaintiff's stock had been found separately kept, at the time of the panchanama on 20-6-1944. There was no such stock which could be distinguished from the rest. Nor was it pointed out to panchas that plaintiff and his mother were separately cooking. As the plaintiff and Mr.A.R Yellapurkar asserted that some portion of the stock belonged to them, their say had been mentioned in the panchanama. It is not admitted that the stock actually belonged to the ~~defendan~~ Plaintiff. It is not true that defendant was aware of the fact that this stock belonged to plaintiff.

6. Even if it did belong to plaintiff, it had been mixed up with Mr. A.R.Yellapurkar's stock. It was in his possession, and not separately in plaintiff's possession. Hence under the District Magistrate's notification Mr. A.R.Yellapurkar was

bound to give a declaration for the whole stock whether held by him on his own account or otherwise. Hence the Sub Inspector of Police was justified in attaching the whole stock.

7. This attachment of the whole stock in A.R.Yellapurkar's possession was sought as he was found to be selling rice illegally. This plaintiff had also been participating in such sales as was proved at the trial. The plaintiff ~~xas~~ therefore was in fact in league with his relative - Mr. A.R.Yellapurkar.

8. The plaintiff's stock was attached by the Sub Inspector of Police of Yellapur in pursuance of the order passed by the Sub Divisional Magistrate. It is not true that the defendant sent the Sub Inspector of Police at night time for effecting the attachment. The plaintiff therefore cannot challenge the order of the Sub Divisional Magistrate and fasten the liability of such attachment on the defendant simply because the defendant had moved the Sub Divisional Magistrate for such attachment. ~~as~~ The defendant acted bone fide and in the course of his official duties and ~~as~~ the Sub Divisional Magistrate had passed the order after applying his judicial mind.

9. It is not admitted that plaintiff had kept his stock separately or that it consisted of 2 bags and 56 seer's of rice as alleged in plaint para 2. It is not true that the criminal case was filed against Anant Rama Yellapurkar due to malice.

10. It is not true that defendant got plaintiff's rice attached maliciously as plaintiff was a relative of Anant Ram Bhat Yellapurkar. The defendant had come to Yellapur only a' ~~x~~ couple of months earlier and had no reason to take any such action maliciously against the plaintiff.

11. The attachment was perfectly legal and justified. The plaintiff applied for releasing the stock but his application was rejected by the Sub Divisional Magistrate. The plaintiff challenged the Sub Divisional Magistrate's order and applied to the Sessions Court wherein his application was dismissed on 26-4-1945. This suit has not been filed even within 1 year from this date. Plaintiff had no reason to await for the decision of the criminal case or the release of the whole stock. ~~Thus plaintiff failed to get redress.~~ The plaintiff cannot ~~took and~~ claim the benefit of the period

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during which the stock was under attachment, as the basis of his suit is the alleged wrongful and malicious attachment.

12. It is not true that plaintiff was put to any loss as alleged in paras 2 and 3. He was actually in league with A.R.Yellapurkar and this suit has been filed at his instance. There was justification for the attachment of the stock, not in dispute in this suit. It was not got attached due to malice or illegal grounds. Hence claim for damages cannot arise.

12. Without prejudice to foregoing contentions it is asserted that the damages claimed are excessive.

Supplementary

Suits :

Kanara.

For Rs. 1,000 as damages for the alleged malicious prosecution and for contending that the part of the stocks of rice and paddy found in the Plaintiff's house belonged to them.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 7502.

Bombay Castle, 21st July 1947.

Letter from the Collector of Kanara No. T.R.-9054, dated the 22nd May 1947—Forwarding papers in the cases noted in the margin and requesting sanction to their defence.

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION, KARWAR

Civil Suit No. 1 of 1947.

Anant Ramabhat Yellapurker .. .. .. Plaintiff ;

versus

The Mamlatdar of Sirsi .. .. .. Defendant.

Claim—Rs. 1,000.

Civil Suit No. 2 of 1947.

Annapoornabai *kom* Dasa Bhatta .. .. Plaintiff ;

versus

The Mamlatdar of Sirsi .. .. .. Defendant.

Claim—Rs. 100.

Civil Suit No. 3 of 1947.

Vithal Sadashiva Deonalli .. .. .. Plaintiff ;

versus

The Mamlatdar of Sirsi .. .. .. Defendant.

Claim—Rs. 100.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 373, dated the 29th May 1947—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Kanara, No. 7501, dated the 21st July 1947—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suits on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,

Original Secretary to Government.

G. R., No. 7502, L.D., dated 21st July 1947.

To

*The Home Department,

*The Commissioner, Southern Division,

*The Collector of Kanara,

Issued C&P 26/7/48 The District Government Pleader, Kanara (with 2 copies of the brief).

*With a copy of the brief.

No. of 1947.

Copy forwarded for information and guidance to

Submitted after issue
File in S. Kanara/48 (new)
27-7 A.S. 27(7)

47 +25?

KANARA CIVIL SUITS NOS. 1, 2 AND 3 OF 1947.

Chronological Statement of Facts.

SUIT No. 1.

1. This suit is filed by Mr. Anant Rambhatta Yellapurkar against Mr. R. S. Naik, Mamlatdar of Sirsi, claiming from the defendant Rs. 1,000 as damages for malicious prosecution.

File I, p. 25.

2. Under an order No. 4905 of 28th April 1944 issued by the District Magistrate, Kanara, in exercise of the powers under Rules 81 (2) of the Defence of India Rules every person was required to make a declaration in the first week of every month of all stocks of rice and paddy held by him in excess of 12 bags of paddy or 9 bags of rice.

File I, p. 71.

3. On 20th June 1944 the defendant who was then Mamlatdar of Yellapur checked the stocks in possession of the plaintiff and found that he (plaintiff) was in possession of 30 bags of paddy and 13 bags of rice. On 8th September 1944 the defendant moved the Sub-Divisional Magistrate, Karwar Division, to issue a warrant for the attachment of the stock in plaintiff's possession. In pursuance of the warrant which was issued on the same day 14 bags of paddy and 15 bags of rice were attached from the plaintiff's house at Yellapur.

File II, p. 27.

4. On 12th September 1944 the plaintiff applied to the Court of the Sub-Divisional Magistrate, Karwar, for an order releasing his paddy from attachment.

File I, p. 107.

5. After recording some evidence, the Sub-Divisional Magistrate held that a prima facie case had been made out against the plaintiff and framed a charge against the plaintiff.

File III, p. 187.

File I, p. 111.

6. On 23rd September 1945 the District Magistrate, Kanara, accorded sanction to the withdrawal of the prosecution against the plaintiff. Accordingly, on 29th September 1945 the Public Prosecutor applied to the Court for permission to withdraw the case under section 494 of the Criminal Procedure Code.

7. On 25th September 1946 the plaintiff gave notice of suit to the defendant under section 80 of the Civil Procedure Code and thereafter he filed the present suit on the Court of the Civil Judge, Senior Division, Karwar.

SUITS NOS. 2 AND 3.

8. These two suits are filed respectively by Mrs. Annapoornabai *kom* Dasa Bhatta, an aunt of Mr. Yellapurkar, and Mr. Vithal Sadashiv Deonalli, and arise out of the same transaction. Both the plaintiffs claim Rs. 100 each from the defendant Mr. Naik as damage for the loss alleged to have been sustained by them on the ground that part of the paddy attached from Mr. Yellapurkar's house on 8th September 1944 belonged to their notice of suits on behalf of these plaintiffs was given by their pleader to Mr. Naik on 25th September 1946.

Grounds of Defence.

SUIT No. 1.

The plaintiff in this suit claims Rs. 1,000 as damages for his alleged malicious prosecution by the defendant who at the relevant date was the Mamlatdar of Yellapur. The defendant had filed a complaint against the plaintiff in the Court of the Sub-Divisional Magistrate, Karwar, under

sub-rule (4) of Rule 81 of the Defence of India Rules alleging that he (plaintiff) had contravened the District Magistrate's order under sub-rule (2). The proceedings were thus admittedly launched by the defendant and since the plaintiff was acquitted in pursuance of the withdrawal of the prosecution, it can also be said that they terminated in his favour. However, in order to succeed in an action for malicious prosecution the plaintiff must further prove that (*a*) in instituting the criminal proceedings the defendant acted without reasonable and probable cause and (*b*) that he acted maliciously. (See Salmond: Law of Torts 11th edition page 618; Bhagoji *v.* Alandi Municipality, 38 Bom. L. R. 1098).

2. As regards (*a*), no action will lie for the institution of legal proceedings, however malicious, unless they have been instituted without reasonable and probable cause. (Salmond: page 618-19). Reasonable or probable cause is an honest belief in the guilt of the accused based on a full conviction founded upon reasonable grounds of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinary, prudent or cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime. (Hicks *v.* Faulkener (1878), 8 Q. B. D. 167; Bhim Sen *v.* Sitaram I. L. R. 24 All. 363). Further, the burden of proving the absence of reasonable and probable cause lies upon the plaintiff. It is not for the defendant to prove affirmatively as a defence that reasonable and probable cause existed. If there is no sufficient evidence of the absence of such cause, judgment must be given for the defendant (Salmond: page 619). It cannot be said in this case that there was no reasonable and probable cause for the prosecution. When he checked the stock on 20th June 1944 in the plaintiff's house, the defendant found that the plaintiff had 30 bags of paddy and 13 bags of rice in the house. These quantities exceeded the limit prescribed in District Magistrate's notification of 28th April 1944. Although it was alleged before him that 8 bags of rice belonged to Mr. Dewanalli and 5 bags to Mrs. Annapoornabai, the defendant had found that the whole stock of rice checked by him was in possession of the plaintiff Mr. Yellapurkar. Both Mr. Dewanalli and Mrs. Annapoornabai are the plaintiff's relatives (the latter being his aunt) and both of them had been living in the house of the plaintiff for several years. (*Vide* defendants reports dated 16th September 1944 and 15th October 1944 at pages 49 and 68 of File III). In view of these facts the defendant was justified in assuming that the whole stock belonged to the plaintiff and he had therefore on reasonable and probable cause for prosecuting the plaintiff. His omission to verify the allegations of Mrs. Annapoornabai and Mr. Dewanalli by separately checking their stock can at the most be considered as an error of judgment but that by itself is hardly sufficient to prove the absence of reasonable and probable cause.

3. The plaintiff must prove not only that there was no reasonable and probable cause for instituting the prosecution but also that the defendant was impelled by malice in instituting the same. The malice which must be established is not mere malice in law but malice in fact, that is, a malicious intention, spite or indirect or improper motive for the prosecution. No action will lie for the institution of legal proceedings, however destitute of reasonable and probable cause unless they are instituted maliciously, that is to say, from some wrongful motive (Salmond: page 622; Abrath V. N. E. Railway (1833), 11 Q. B. D. pages 440-50; Bhim Sen *v.* Sitaram I. L. R. 24 All. pages 363-67; Chhaganlal *v.* Thana Municipality, 34 Bom. L. R. pages 143-57). The burden of proving malice lies on the plaintiff (Salmond: page 623). The plaint contains certain vague and indefinite allegation regarding the grounds

on which malice is alleged against the defendant. These allegations should not be admitted. The District Government Pleader should take necessary instructions from the defendant before traversing these allegations in the Written Statement.

4. *Damage.*—Without prejudice to the foregoing contentions it should be urged that the damages claimed are excessive. The plaintiff should be put to proof thereof.

5. *Jurisdiction.*—The suit is barred under section 17 (*1*) of the Defence of India Act. The defendant instituted the prosecution against the plaintiff under Rule 81 (4), in good faith. Under section 17 (1) therefore the suit does not lie.

SUITS NOS. 2 AND 3.

6. Stated briefly, the plaintiff's contention in these suits is that on 8th September 1944, they had certain quantities of rice in plaintiff's house, that these quantities were attached in spite of the plaintiff's protests, that they were not released till 29th September 1945, and that the attachment was made by the defendant maliciously with a view to harrassing the plaintiffs who were the relatives of Mr. Yellapurkar. These averments should not be admitted. The search and attachment were made in Mr. Yellapurkar's house under a warrant issued by the Sub-Divisional Magistrate. The defendant was admittedly not present at that time. The plaintiff's applications for the release of the attached property were rejected by the Sub-Divisional Magistrate by two separate orders issued on 1st December 1944. In these circumstances the defendant cannot be held responsible for the alleged loss suffered by the plaintiffs. Their claim of Rs. 100 as damages is moreover exaggerated, and should not be admitted. They should be put to strict proof of actual loss sustained by them.

File III, pp. 75-77

7. For the reasons set forth above all the three suits must be dismissed.

8. The District Government Pleader is requested to draft Written Statements in the suits after taking full instructions from the defendant. Four files containing papers of the case accompany.

Received on - 29th November 1946.

Registered on- 3rd January 1947.

Decided on- - 29th October 1948.

Duration- - - 1 year and 11 months.

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IN THE COURT OF THE CIVIL JUDGE; SENIOR DIVISION,KARWAR.

AT KARWAR. Exhibit no.33.

Civil Suit No. 3 of 1947.

Pleaders
mr. R. V. Gangoli.
District Govt. Pleader (Mr. T.S. Navelkar)

Vithal Sadashiv Deonalli, age 36, Brahmin agriculturist of Yellapur. Plaintiff.

against

Rama Samu Naik, age 44, Komarpant, -- Mamlatdar of Sirsi. Defendant.

Claim- Rs.100/-.

The Plaintiff sues for the recovery of Rs.100/- on -- account of the loss caused to him by the malicious action of Defendant and costs of the suit alleging that Plaintiff is a landholder of lands situate in Yellapur Taluka assessed at Rs.90/-; that he was staying separately with his mother in the house of Mr.A.R.Yellapurkar; that the Defendant was -- officiating as Mamlatdar of Yellapur; that on 20th June 1944, the Defendant in order to verify the stocks, visited the house of Mr. Yellapurkar and noted separate stocks of rice and paddy belonging to Plaintiff; that on 8th September 1944, the Defendant sent Police Officers and his man-one Hosalkar - and attached at night all the stock of paddy and rice * from the house of Mr. Yellapurkar inspite of his protest and during his absence; that the Defendant got an exparte order of -- attachment and attached the two bags and 56 seers of rice along with the stock of Mr. Yellapurkar with malice; that Plaintiff applied for the release of his paddy to the Sub-Divisional Magistrate but Defendant falsely and maliciously disputed the rights of Plaintiff in order to harass and put him into loss; that on account of the high-handed conduct of Defendant, Plaintiff's rice continued under attachment for over a year, until it was released on 29th November 1945; that the rice was rotten during this period, that it was -- purchased by Government at Rs.84-9-6 though it was worth

*o.p.2.

originally Rs.104/-;that the notice under Section 80 of the Civil Procedure Code was served on Defendant on 23th September 1946; that the cause of action arose at Karwar on 29th September 1945 when the order for releasing Plaintiff's rice was passed by the Sub-Divisional Magistrate at Karwar.

2. The Defendant contends by written statement exhibit no.14 that the suit is barred by Section 17(1) of the Defence of India Acts; that he acted in good faith and in his official capacity as Mamlatdar of Yellapur; that the suit is not tenable; that the cause of action arose on the alleged illegal attachment effected on 8th September 1944; that the suit is clearly time barred; that Plaintiff and his mother were staying jointly in June 1944 with Mr. Yellapurkar; that he was not aware of the fact that the attached stock belonged to Plaintiff; that Plaintiff and Mr. Yellapurkar ascertained that some portion of the stock belonged to each of them, that their say has been mentioned in the Panchanama, that the stock found on 20th June 1944 was all in the possession of Mr. Yellapurkar and not separately in the Plaintiff's possession; that under the District Magistrate's notification, Mr. Yellapurkar was bound to give declaration for the whole stock whether held by him on his account or otherwise, that therefore the Sub-Inspector of Police was justified in attaching the whole stock; that the stock of Mr. Yellapurkar's possession was attached because he was found to be selling rice illegally; that the Plaintiff was also taking part in the sales of rice; that the stock of Plaintiff was attached by the Sub-Inspector of Police, Yellapur in pursuance of the order passed by the Sub-Divisional Magistrate; that it is not true that he sent the Police Sub-Inspector at night time for attachment; that he is not liable for the act done as a result of the order of the Sub-Divisional Magistrate; that the Defendant acted bona fide *o.p.3. and in the course of his official duties; that it is not true that the stock of Plaintiff consisted of 2 bags and 56 seers of rice; that it is not true that he got Plaintiff's rice attached maliciously as Plaintiff was a relation of Anant Rama Bhat; that the attachment was perfectly legal and justified;

that Plaintiff had applied for releasing the stock but his application was rejected by the Sub-Divisional Magistrate; that the Plaintiff applied to the Sessions Court against the order of the Sub-Divisional Magistrate but his application was dismissed on 26th April 1945; that this suit has not been filed within one year from the date of the above order; that Plaintiff was not put to any loss; that this suit has been filed at the instance of Mr. Yellapurkar; that Plaintiff is not entitled to claim damages from him that the damages claimed are excessive.

3. The issues for trial (framed by my predecessor) as per exhibit no.16 are :-

1. Does Defendant prove that the suit is barred by -- Section 17(1) of the Defence of India Act ?
2. Does Plaintiff prove that he was the owner of the rice referred to in the plaint ?
3. Does Plaintiff prove that the attachment of the same was illegal and malicious ?
4. Is the suit in time ?
5. Is Plaintiff entitled to damages ?
6. If so, how much ?
7. What order ?
8. What decree ?

4. My findings are:-

1. Yes.
2. Yes.
3. No.
4. No.
5. Yes, provided Plaintiff succeeds on above issues.
6. Rs.10/-.
7.)
and) As per order.
8)

*o.p.4. * R e a s o n s.

5. This suit was tried as a compahion suit with suit no. 1 of 1947 with the mutual consent of the parties (Vide pursis, exhibit no.20). The grievance of Plaintiff in this case is that the attachment of the stock effected by

Defendant on 8th September 1944 was illegal and that, therefore, he was put to a loss by the illegal conduct of Defendant. The stock of Plaintiff in this case appears to be belonging to him as he owned lands at Yellapur (Vide exhibits nos. 25 and 26). Plaintiff and Defendant were examined at exhibits nos. 30 and 32 -- respectively. Exhibit no.27 is the Yadi of rice that was -- delivered to Plaintiff after the withdrawl of the case. The rice that was delivered to Plaintiff was worth Rs.84-9-6 and Plaintiff complains that he was put to a loss of Rs.25/-. For reasons stated in the judgment of suit no.1 of 1947 my conclusions are accordingly.

6. In this particular case I have to add this much that Plaintiff exhibit no.30 has not brought out any matter to justify the conclusion that Defendant was filled with malice towards him. For want of the proof of malice Plaintiff is bound to fail in this suit.

7. The point of limitation has been raised in this case. It is argued by the learned pleader of Plaintiff that the claim is governed by either article 36 or 49 of the Limitation Act. I have gone through both these articles and found that they were not applicable. This is a case for the recovery of damages for the abuse of legal process issued by the Court. In my opinion, the claim is governed by article 29 of the Limitation Act and time would begin to run from the date of seizure. The seizure took place on 8th September 1944 and the suit is filed 29th November 1946. So the claim is clearly time barred (Vide Shivrao Vs.The Secretary of State for India, 44 Bombay Law Reporter 668). My finding on the 4th issue is accordingly.

8. I am inclined to grant Rs.10/- as damages to Plaintiff provided he succeeds on other issues. I have taken the status of Plaintiff into consideration before arriving at the quantum of damages.

O r d e r.

9. Suit is dismissed. Plaintiff to pay the costs of Defendant and bear his own.

29th October 1948. Sd. N.V.Ransubhe,

Civil Judge, Senior Division.

Received on - 28-11-1946
Registered on- 3-1-1947
Decided on- - 29-10-1948.
Duration- - 1-10-1

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION, KARWAR.

AT KARWAR.

Civil Suit No. 1 of 1947.

Ex. 129.

Pleaders. mr. R.V. Gangol

Annnt Rambhat Yellapurkar, age 41, Brahmin, agriculturist of Yellapur. Plaintiff

against

District Govt. Pleader (mr. B.S. Mavinkurve)

Rama Samu Naik, age 44, Komarpant, Mamlatdar Sirsi. Defendant.

Claim- Rs.1000/-.

The Plaintiff sues for the recovery of Rs.1000/- as damages for malicious complaints filed by Defendant and for costs of the suit alleging that Defendant was officiating as Mamlatdar of Yellapur from March 1944 to February 1945 that Plaintiff is an agriculturist of Yellapur paying an assessment of about Rs.300/- to Government; that Plaintiff was appointed as social worker of Yellapur by the Collector of Kanara and has been doing that work for 5 years that in his capacity as social worker, Plaintiff was required to point out illegalities committed by Defendant in his course of duties as Mamlatdar; that the actions of the Defendant were critisised in the newspapers and that he laboured under the supposition that Plaintiff was * the cause of these criticisms, that for these reasons, Defendant was illdisposed towards Plaintiff and was finding out opportunities to bring him into troubles and harass him; that a notification was issued by the Collector of Kanara in April 1944 by which persons who held stock of over 12 bags of paddy and 9 bags of rice were to declare the stock from first May in the first week of every month; that this notification was cancelled on 30th August 1947; that in the first weeks of May and June 1944 Plaintiff had no stock about 12 bags of paddy and 9 bags of rice that therefore he was not required to give declaration that on 20th

*c.p.2.

June 1944 Defendant visited Plaintiff's house and held the Panchanama about the stock of paddy of Plaintiff and two other persons residing separately in his house, that on that date Plaintiff was found to have about 30 bags of paddy in stock; that in order to harass and prosecute him maliciously, Defendant as Mamlatdar rushed to the Criminal Court on 8th September 1944; that the complaint against Plaintiff was filed in the Court of Sub-Divisional Magistrate, Karwar Division; that Defendant with malice and bad intention to harass and dishonour Plaintiff, got an attachment order and got attached through Police all the stock of paddy in Plaintiff's house and during his absence and at night time inspite of the protest he made, leaving nothing for his maintenanc of for agricultural use; that Plaintiff protested against this illegal attachment but Defendant objected to the release of the stock; that Defendant had no reasonable cause to file a complaint; that on account of the Criminal Case, Plaintiff was obliged to neglect his agricultural and other important avocations; that Plaintiff approached the District Magistrate and pointed out to him the weakness in the case; that the District Magistrate therefore ordered the withdrawal of the case and Plaintiff was acquired on 29th September 1945; that the Criminal case was launched by Defendant against Plaintiff with full knowledge that it was false and that it could not be supported by evidence; that Plaintiff was put to a great loss; that the cause of action arose on 29th September 1945 on which date Plaintiff was acquitted; that a notice under Section 80 of Civil Procedure Code was issued to Defendant on 26th September 1946 and was received by him on 28th September 1946.

2. The Defendant by written statement exhibit no.15 contends that the suit is barred under Section 17(1) of the Defence of India Acts; that the Defendant instituted the prosecution against Plaintiff under Rule 81(4) in good faith; that the suit does not lie; that the complaint was launched by him in his capacity of a Public servant in good faith as was ordered by the District Magistrate; that he began to officiate as Mamlatdar at Yellapur from 13th September 1944; that the notification of the District Magistrate was duly published by him, that he was ordered

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by District Magistrate to prepare register of all such persons and of big stocks and to verify them by personally visiting each house; that Plaintiff's name appeared in such register; that Plaintiff neigher gave a separate declaration nor signed the register after noting the stock and the stock held by him; that these orders have been properly published and the Plaintiff was aware of them; that in June 1944, Plaintiff saw him and complained that the limit fixed by District Magistrate was too arbitrary and asked for the copy of the notification for complaining to higher authority that Plaintiff took a copy of the notification from him but did not give the desired declaration that on 19th June 1944, he got orders from the District Magistrate to verify the stocks in all important villages; that on 20th June 1944 he began verifying such stocks held by various persons in -- Yellapur in company with the respectable Panchas; that during such an enquiry, he visited Plaintiff's house and found that he was in possession of 30 bags of small variety of paddy, one bag of big paddy and 30 bags of rice of small variety; that a Panchanama was drawn at that place in his official capacity; that Plaintiff admitted 30 bags of paddy as belonging to him; that Plaintiff, inspite of this fact, did not give any declaration; that Plaintiff began to get the paddy milled and to sell rice contrary to the District Magistrate's notification dated 3rd September 1944; that in his official capacity, the Defendant was required to place all the facts before the District Magistrate in June 1944; that under the orders of the District Magistrate, Defendant filed the complaint against the Plaintiff for non-declaration and for selling rice that the District Magistrate passed such an order; that there were good -- grounds for launching the Criminal complaint; that the Sub-Divisional Magistrate, Karwar Division, ordered the Sub-Inspector of Police to attach the stock in Plaintiff's possession; that it was attached on 8th September 1944 that it came to light that Plaintiff then held only 16 bags of paddy and 6 bags of rice * in his house; that Defendant

*o.p.4.

had in his house three children and two adults - Plaintiffs in Civil Suits nos. 2 and 3 of 1947; that there was no justification for the disappearance of the vast stock found on 20th June 1944; that on the attachment of the stock by the Police Sub-Inspector, Plaintiff was given immediately a ration card and no inconvenience was caused to him; that Defendant was not present at the time of the attachment; that the Defendant did not know that Plaintiff was appointed as a social worker by the Collector; that he did not know that Plaintiff was the correspondent of the Kanara News and that Plaintiff took part in pointing out his irregularities in the official duties; that Defendant was not ill-disposed towards Plaintiff and had no interest to harass and put him into loss; that at the time of the Panchanama, Plaintiff ascertained that the rice of one bag of paddy did not belong to him that under the District Magistrate's notification, the stock found in the possession of the Plaintiff was required to be attached; that the two other Plaintiffs were the close relatives and were staying with him, that he had sufficient cause to file the complaint; that he acted under the orders of the District Magistrate who had applied his judicial mind while signing the prosecution, that it is not true that Defendant got the stock attached maliciously or with the bad intention of harassing the Plaintiff; that the attachment was carried out by the Police Sub-Inspector under the orders of the Sub-Divisional Magistrate for which action the Defendant cannot be held responsible that it is not true that the stock was attached at night, that the Defendant was not present at the time of the attachment; that Plaintiff did not give a declaration even after the Panchanama; that Plaintiff began to sell rice and hence the Defendant was justified in sending a report against him on or about 12th July; that both oral and documentary evidence had been placed before the Court to show that Plaintiff was actually selling rice and had got large quantity of paddy milled; that charges has been framed on both counts as prima facie case was made out; that at that time, Plaintiff applied to District Magistrate for withdrawal of the case and the District Magistrate granted the withdrawal without assigning any reason; that it is not true that Plaintiff was required to neglect his agricultural and other important avocations; that it * is not

*o.p.

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true that he filed the complaint maliciously as a result of ill-feelings towards Plaintiff with the object of -- harassing him or putting him to loss and dishonour; that it is not true that the order of attachment was obtained exparte with any bad intention; that it is not true that the paddy was spoiled and Plaintiff got a sum by sale that he is not liable for the damages claimed by Plaintiff that the damages claimed are excessive that the suit should be dismissed with costs.

3. The issues for trial as per exhibit no.17 ((framed by my predecessor Mr. Tallur) are as below:-

1. Does Defendant prove that the suit is barred by Section 17(1) of the Defence of India Act ?
2. What order ?
3. Does Plaintiff prove that the Defendant set the law in motion against him (Plaintiff) on a criminal -- charge ?
4. Does he prove that the criminal case was capable of being terminated and that it terminated in Plaintiff's favour ?
5. Does Plaintiff prove that the complaint was filed against him by Defendant without reasonable or -- probable cause ?
6. Does Plaintiff prove that the complaint was due to the malicious intention of the Defendant and not with the mere view of carrying the law into effect ?
7. Is Plaintiff entitled to damages ?
8. If so, how much ?
9. What decree ?

4. My findings are :-

1. Yes.
2. Suit is barred.
3. Yes.
4. Cannot be foretold.
5. No.
6. No on both parts.
7. Yes, provided Plaintiff succeeds on above issues.

8. Rs.100/-.

9. As per order.

* Reasons. *c.p.6.

5. This suit and suit no.3 of 1947 were tried as companion suits by the mutual consent of the parties (Vide joint pursis exhibit no.20 in suit no.3 of 1947). Plaintiff in the other suit is a relative of Plaintiff in this suit. Both these Plaintiffs have filed these suits for the recovery of -- damages for alleged malicious complaints filed by the Defendant against them.

6. Plaintiff in this suit in a gentry and a land-lord of Yellapur Taluka. Plaintiff in the other case is also an agriculturist of Yellapur. The Defendant was officiating as Mamlatdar of Yellapur Taluka from 18th March 1944 to February,1945. Under the Defence of India Rules, the Collector issued a notification on 28th April 1944 directing each citizen to give a declaration of stock possessed by him in preceding month, in the first week of every month. It also directed that a citizen should not hold more than 12 bags of paddy or 9 bags of rice. Under the above -- notification the holder of a stock exceeding the limit prescribed in the notification was rendered liable for punishment under rule 81(4) (vide exhibit no.50). On 29th March 1944 the District Magistrate issued another notification prohibiting citizen from selling any -- quantity of paddy and rice to any person other than the Provincial Government or a person authorised by the District Magistrate (Vide exhibit no.51). Under the above notification, a person selling rice to other person other than Government was made liable for punishment under rule 81(4). As per these two notifications, the Defendant in the capacity of a Mamlatdar searched the house of Plaintiff in this suit on 20th June 1944 and found out 30 bags of paddy and 13 bags of rice stacked in his house at two different places (Vide Panchanama exhibit no.100). Out of the 13 bags of rice, Plaintiff in the other suit claimed 8 bags of rice as belonging to him. Plaintiff did not give a declaration as required by the notification dated 28th April 1944. Plaintiff also was found by the Defendant to be selling rice secretly to the people of the town. So the Defendant made a report to the District Magistrate against Plaintiff in this suit for giving

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sanction to file complaints for two offences. The first offence related to the non-declaration of stock and second offence, to selling of rice without a licence to persons other than Government (Vide exhibit no.47, dated 29th August 1944). After the sanction was issued by the -- District Magistrate a complaint was filed on * 8th -- September 1944 by Defendant against the Plaintiff in connection with non-declaration of stock and holding an excess stock of paddy and rice (Vide exhibit no.44). On the same date the Defendant got issued an attachment -- warrant of Plaintiff's stock lying in his house (Vide attachment warrant exhibit no.46). During the course of the attachment the Police authority found out that Plaintiff possessed about 19 bags of paddy in his house (Vide exhibit no.46). Out of these attached bags, Plaintiff in the other suit claimed some bags.

*o.p.7.

7. Another complaint was filed by Defendant on 26th September 1944 after issuing proper sanction from the District Magistrate, against Plaintiff for selling large quantity of rice to private persons without holding any licence (Vide complaint exhibit no.43). Charges were framed in both these complaints against Plaintiff. But later on Plaintiff approached the new District Magistrate Capton Nanjappa who later on assumed charge by that time and requested him to withdraw these two complaints on the allegation that they were not founded on sufficient - reasons. The District Magistrate accorded the necessary sanction for withdrawal of both these complaints (Vide exhibit no.42). The Public Prosecutor then filed a Jahiri on 29th September 1945 in the Court of the Sub-Divisional Magistrate requesting permission to withdraw the cases (Vide exhibit no.45). The cases were then withdrawn.

8. Plaintiff in this suit after the withdrawal of the cases served a notice under Section 80 of the Civil Procedure Code on Defendant on 25th September 1946 calling upon the latter to pay damages (Vide notice exhibit no.76). --

Plaintiff in the other suit served a similar notice on the same day (Vide exhibit no.22 in Suit no.3 of 1947). Plaintiff in this case has sought Rs.1,000/- for damages from Defendant for filing two malicious complaints. Plaintiff in the other suit has sought Rs.100/- as damages from Defendant for malicious attachment and illegal detention of his paddy stock.

9. The defence of Defendant is that no suit can lie against him under Section 17(1) of the Defence of India Act, that he filed those complaints and attached the stock on 8th September 1944 on reasonable and probable grounds and on the strength of the sanction issued by the District Magistrate, that he did those acts in his official capacity, that he was not motivated by malice in launching those complaints and attaching the stock of both Plaintiffs, that the damages claimed are too high and that he is not * liable for the damages. *o.p.8.

10. <u>Issues nos. 3,4,5 and 6:-</u> Before entering into the merits of the case, it is worth while to bear in mind the several tests, the Plaintiff is required to satisfy in a suit of this nature before entitling him to the damages. In Bhaguji Vs. Alandi Municipality, 38 Bombay Law Reporter, 1098 and Dhanji Shaw Vs. Bombay Municipality, 47 Bombay Law Reporter, 304, the law on this point has been correctly described by the Bombay High Court. It is laid down that the Plaintiff has to prove (1) that he was prosecuted by the Defendant, (2) that the Defendant acted without reasonable and probable cause (3) that he acted maliciously, and (4) that the criminal prosecution terminated in Plaintiff's favour.

11. There is a difference of opinion between the parties as regards the right of Plaintiff to file such suits, in as much as the complaints did not terminate in favour of Plaintiff but were withdrawn. The learned pleader of the Defendant relies upon the test no.4 given in Bhaguji Vs. Alandi Municipality, 38 Bombay Law Reporter,1098 and argues that in as much as Plaintiff got the cases withdrawn through the intervention of the District Magistrate, it cannot be said that the complaints ended in his favour. But no concrete authorities are cited by

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the learned pleader of the Defendant in support of his -- proposition. On the contrary, the learned pleader of the Plaintiff has quoted two cases to fortify the view in that it is not necessary that the criminal complaints should have terminated in favour of Plaintiff. It is laid down in Azamat Alli Vs. Quraban, 42 Allahabad, 304, that in order to -- support a suit for damages for malicious prosecution, it is not necessary that the criminal proceedings instituted -- against Plaintiff should have been heard out to the end. In Nagarmull Vs. Jhabarmull, 60 Calcutta, 1022, it is laid down that if the order granting sanction is cancelled, it is a termination of the proceedings in favour of Plaintiff as is required by law. Having regard to these authorities, it is evident that the Defendant must have set the law in motion and that the Plaintiff must not have been convicted in those complaints. The Defendant in this case have set the law in motion and it is, therefore, unnecessary for Plaintiff to have fought the case to the finish and to have got himself acquitted. In my opinion, therefore, the present suits for malicious prosecution can be legally maintained by Plaintiff in this suit. As regards Plaintiff, in the other suit * the attachment of his stock on 8th September 1944 at the hands of Defendant gives him a cause of action on the ground of abuse of legal process, apart from the question whether the attachment resulted in the abuse of legal process.

*o.p.9.

12. The burden of proving want of reasonable and probable cause lies heavily on Plaintiff. In order to prove this salient point, Plaintiff relies upon the following facts:-

(a) There was no due publication of these notifications by the Government.

(b) On the date of the filing of the complaints these notifications were not in force and they were -- cancelled and substituted by a different notification by the District Magistrate appearing on page 2151 of Bombay Government Gazette Part I, dated 7th September 1944.

(c) He had no stock exceeding the limit noted in those notifications and thus he was not required to give a declaration. Besides Defendant did not assess the stock of Plaintiff after holding an enquiry as -- regards the title of the persons claiming that stock.

(d) These notifications did not contain a clause of forfeiture as obtained in the notification dated 7th September 1944 and hence the attachment of the stock on 8th September 1944 at the hands of Defendant was quite illegal.

(e) There was no proper evidence to end the complaint in conviction of the accused.

Relying upon the above facts, Plaintiff tries to show that Defendant had no sufficient reasons to launch these two complaints against him and to attach his and Plaintiff's (in other suit) stock.

13. In order to under stand the point covered by the first ground (a) we have to bear in mind both these -- notifications. Exhibit no.51 is the first notification dated 29th March 1944 on which the second complaint was based. The substance of the notification is as below :-

> "In exercise of the powers conferred by sub-rule 2 of rule 81 read with Government notification, dated 19th December 1941, District Magistrate hereby directs that no person other than a licenced wholesale or retail dealer shall sell or other wise dispose of any quantity of paddy and rice to any person other than the Provincial Government or a person authorised by the District Magistrate".

The second notification exhibit no.50, dated 28th April 1944 reads thus :-

> "In exercise of the powers conferred by rule 1 of rule 116, District Magistrate hereby orders that every agriculturist shall in the first week of every month declare to the village accountant either in writing or verbally the stocks of each of the articles specified in Schedule 2 below held by him on his own account or on * account of or in partnership with any other person at the time of * making the declaration of the total stock *o.p.10 of all such articles in aggregate, amounts to or -- exceeds 25 maunds or 12 bags of paddy 128 seers each, by heap measure, or nine bags of rice of 128 seers by heap measure. In this order agriculturist shall mean any person who by himself or by his tenants or hired labour or otherwise is engaged in the production or growth of agricultural produce."

Schedule 1 of this notification lays down the form of notification. Schedule 2 lays down the articles as paddy and rice. It contains

an endorsement at the end to this effect.

> "Copies sent to Vichari and Kanara News for publication and also to Government Central Press."

A similar endorsement appears on the first notification — exhibit no.51. Plaintiff exhibit no.79 pleads ignorance of these notifications and contends that they were not duly published by the Government by beat of drum in the town and villages. The Defendant, exhibit no.97, alleges that he — issued specific orders to all Village Officers to publish these notifications by beat of drum and that they did so accordingly. Defendant has cited Bhikku, exhibit no.106, to prove his knowledge of the publication of these notifications and his conduct of having given a declaration according to the notification. The second witness is Shantaram Kaisare, exhibit no.113, who was officiating as Shanbhog at that time and who published these notifications by beat of drums. — According to this Defendant, exhibit no.113, the Defendant asked him and other Village Officers during a meeting at Yellapur Kacheri to publish the notifications, exhibits nos. 50 and 51 orally and that he did so accordingly. Kaisare, exhibit no.113, published notification, exhibit no.51, by the beat of drums (View the cyclostyled copy, exhibit no.96 which contains an endorsement at the hands of another — Shanbhog that the notification exhibit no.51 was duly published). In exhibit no.96 the prior notification of 1943 of the District Magistrate was wrongly written by the Village Officer as was explained by the Defendant, exhibit no.97. According to Defendant, exhibit no.97, exhibit no.96 was intended for the disputed notification of 1944. This copy exhibit no.96 is attacked by Plaintiff's learned pleader in that it does not contain any Outward Register number and any signature of any towns men in connection with the due publication. The learned pleader of the Plaintiff further argues that according to rule 119 clause (1) of the Defence of — India Act, these notifications did not contain any particular mode of publication prescribed by the District Magistrate.

The learned pleader of the Plaintiff has brought to my notice Emperor Vs. Bhatarji, 47 Bombay Law Reporter, 143. It is laid down in the above case that mere publication of the notification in * the Bombay Government Gazette is not enough for the purpose *c.p.ll. of rule 119 clause (1) of the Defence of India Rules and that the best way, besides publishing it in the Bombay Government Gazette, is that a summery of the notification should be published by beat of drum in every village and a translation of the notification in the language of the District should be put up in the Chavdi.

14. The learned pleader of the Defendant has brought to my notice Emperor Vs. Samansab, 48 Bombay Law Reporter 964. It is laid down in the above case that where no plea of ignorance is put forward by the party concerned, it is not incumbent on the prosecution to prove his knowledge of the existance of the notification. The Defendant in addition to the oral evidence discussed above has produced a Register of the Houses located in Yellapur containing the names of the persons who made the declarations (Vide exhibit no.117). This Register, exhibit no.117 shows that majority of persons at Yellapur knew of these notifications and have made declarations accordingly. The columns against the name of Plaintiff in exhibit no.117 are all blank showing thereby that he did not make any declaration accordingly. The Defendant has also produced the declarations of other Yellapur people to show that due publicity was given by the Village Officers to these notifications (Vide exhibit no.98, dated 4th May 1944, exhibit no.99, dated 5th May 1944, exhibit no.114, dated 11th May 1944, exhibit no.115, dated 26th May 1944 and exhibit no.116, dated 10th June 1944). The Defendant has also produced his various orders to the Village Officers to publish these notifications in their respective villages (Vide exhibit no.83, dated 12th June 1944, Exhibit no.97, dated 12th April 1944). It is thus quite clear that every attempts w were made by Defendant to get these notifications widely circulated and made known to the public through his Village Officers. Exhibit no.117, the Register points out that majority of the people of Yellapur came to know of these notifications and have given the necessary declarations of their respective stock. Plaintiff is a

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respectable gentry and landlord of Yellapur and was a Socia Worker. According to the stand taken by Plaintiff, exhibit no.79, he was a moving spirit of his town Yellapur and was taking active part in various social and other Government works. It is, therefore, unfair on his part to say that he did not come to know of these notifications. During the cou of criminial prosecution *the stand taken by Plaintiff -- denotes beyond a shadow of doubt that Plaintiff had full--- knowledge of these notifications as soon as they were -- published by the Village Officers. On 22nd November 1944 he made an application to the Sub-Divisional Magistrate praying for the stay of the proceeding on the ground that the -- notifications were illegal and that he intended to move the High Court on that point (Vide exhibit no.81). On 1st May 1945 and 24th July 1945 he filed two applications to Sub-Divisional Magistrate for the same purpose (Vide exhibits nos. 82 and 83). He failed in the High Court. ~~The Sessions Court ultimately decided that the notifications were intra vires (Vide the judgment of the Sessions Court exhibit no.29 in Suit no.3 of 1947).~~ It is, therefore, ridiculous on the part of Plaintiff to say now that he was kept in darkness by the Defendant. To crown all, Plaintiff did not make a si single allegation in the plaint that these notifications were not duly published by Government. Para 2 of the plaint is quite clear on the point. The allegations in para 2 of the plaint discloses clearly that Plaintiff had full -- knowledge of these notifications as a result of the wide publicity made by the Village Officer consequent upon the orders of Defendant. Having regard to the pleadings of Plaintiff, I am of definite opinion that the plea of want of due publication of these notifications cannot be raised at all by Plaintiff.

*o.p.12.

15. As regards the second ground covered by para 12 clause (b) we have to bear in mind the first complaint, for want of declaration was filed on 8th September 1944 (Vide exhibit no.44). This complaint was lodged on the strength

of the notification. dated 28th April 1944 (Vide exhibit no.50). The second complaint was filed on 26th September 1944 (Vide exhibit no.43). It was a complaint for selling rice without any licence as per District Magistrate's notification, dated 29th March 1944 (Vide exhibit no.51). On 7th September 1944, the District Magistrate issued a fresh notification which appears on page 2151, Part I, Bombay Government Gazette, dated 7th September 1944. This new notification prohibited a person to hold stock exceeding 128 Paylees meaning thereby 2 -- bags of rice. It is argued by the learned pleader of Plaintiff that this new notification abbrogated the former two notifications in dispute and hence the Defendant who was a first Class Magistrate ought to have paused before filing these two complaints under the superceded two notifications in dispute. In support of this -- proposition, Plaintiff's learned pleader relies upon Ramdsingh *o.p. Vs. Emperor, A.I.R.1948. Patna, 229 and Emperor Vs. Bansgopal, 55 Allahabad, 961. In the Patna case X was convicted for the -- despatch of rice bags in contravention rule 81 (4) under the Defence of India Act of 1939. The Defence of India Act expired on 30th September 1946. A question arose in revision to the High Court whether X should be dispunished upon the expiry of the -- statute. It is observed by their Lordships as below:-

> "As a general rule, unless there is a special rule to the contrary, after a temporary Act has expired no proceedings can be taken upon it and it ceases to have further effect. Consequently, an offence committed against a temporary Act must be prosecuted and punished before the Act expires and as soon as the Act expires, any proceedings which had been taken against a person will ipso facto terminate.

In the Allahabad case, a prosecution was started against the -- accused under some emergency powers ordinance of 1932 and charges were framed by the Magistrate. The accused took the matter to the High Court in revision and the prosecution was stayed. By the time the revision came up for final hearing, the ordinances had expired. Their Lordships held that the prosecution could not -- stand as the ordinances had expired. Both these cases, in my opinion, have no bearing upon our present case. In the present

case, the Defence of India Act of 1939 and the Defence of India Rules under which these notifications were issued had not expired on 8th September 1944 and 26th September 1944 on which dates the two complaints were filed against Plaintiff. So long the Act and Rules were in force in 1944, the force of the notifications in dispute continued during the period of the prosecution of these two complaints. The offences were committed by Plaintiff under rule 81(4) read with the notification issued under rule 81(2) and so long rule 81 was in force, the Court was competent to entertain the complaints filed by Defendants. The new notification of 7th September 1944 has not abrogated or superceded the former two notifications in dispute as contended by the learned Pleader of Plaintiff. It simply modified the limit of stock contained by the disputed notification by restricting the stock limit to two bags rice instead of 9 bags of rice. If on the date of the institution of these complaints, the Defence of India Act and the Rules would have expired, the matter would have been quite * different. But so long the Defence of India Act and Rules were in force in 1944, the notification issued under rule 81 must be deemed to be in force and quite valid for the various periods and the offences committed in contravention of those notifications could not be arested by the fact that a new notification — modifying the stock limit was in vogue on the date of the filing of these complaints. My firm conviction, therefore, is that Defendant was perfectly justified in launching the complaints in spite of the fact that a new notification dated 7th September 1944 was in vouge on the date of the complaints in as much as the offences relate to the — period during which the disputed notifications were in valid force.

*o.p.14.

16. Regarding the ground covered by para 12 — clause (c) in that Plaintiff did not hold stock in excess of the limit provided by the notification, the Panchanama

exhibit no.100, dated 20th June 1944 discloses that Plaintiff was in possession of 30 bags of paddy at one place and 13 bags of rice at another place in the same house. These 13 bags of rice consisted of 8 bags belonging to Vithal who figures as Plaintiff in the other suit and of 5 bags belonging to -- Annapurnabai the paternal aunt of Plaintiff. The complaint of Plaintiff, exhibit no.79, is that Annapurnabai and Vithal who held lands, had brought this fact to the notice of Defendant at the time of the Panchanama and, therefore, the Defendant ought to have deleted that stock as against his name. The Defendant, exhibit no.97, explains that it was not necessary on his part to hold a title enquiry at the spot before verifying the stock and that Plaintiff was liable for the stock he held in his house on account of himself and for others . The explanation given by Defendant, exhibit no.97, appears to be quite correct. Because the notification, exhibit no.50, lays down that a man will be -- held liable if he holds the stock in excess of 12 bags of paddy or 9 bags of rice by himself on his own account or on account of on in partnership with any other person. So even supposing for arguments sake these 13 bags belonged to Annapurnabai and Vithal Plaintiff was responsible for their possession for they were -- lying in his house. Secondly Plaintiff tries to show that in the first week of June 1944, he was not in possession of the stock exceeding the limit noted down in the notification. The learned pleader of Plaintiff brings to my notice 3 permits issued to him for removing * paddy and rice bags to different villages. *e.p.15. Exhibit no.52 is the permit issued to Plaintiff on 22nd June 1944 for removing 2 bags of rice to Karwar and 2 bags of rice to Ankola for the support of his School going children. Exhibit -- no.71, dated 5th July 1944, is the second permit issued to Plaintiff for removing 6 paddy bags and 2 rice bags to Telgeri for the payment of the wages in kind to the coolies employed by him. Exhibit no.72, dated 1st July 1944, is the 3rd permit issued to Plaintiff for removing 6 bags of paddy to Telgeri for the same purpose. The learned pleader of Plaintiff deducts 24 bags of paddy out of 30 bags of paddy found on 20th June 1944 and tries

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to show that in the first week of July his client was in possession of 6 bags of paddy only. The calculations made by Plaintiff's learned pleader based upon these 3 permits are quite misleading and beside the point. The complaint, exhibit no.44, filed by Defendant relates to the offence committed by Plaintiff in connection with his non-declaration of stock which he held at the end of May 1944, in the first week of June 1944. So these permits which are of subsequent dates are of no use to Plaintiff and do not exonerate him from his liability of holding stock at the end of May, 1944 for which he made no declaration at all. The other complaint exhibit no.43 related to the sale of rice by Plaintiff since May 1944 to September 1944. Thus it is quite crystal clear from the Panchanama, exhibit no.100, that Plaintiff held 30 bags of paddy and 13 bags of rice in his house in excess of the stock limit prescribed by the notification and thus contravened rule 81 (2) and made himself liable for prosecution under rule 81(4).

17. Regarding the ground covered by para 12 clause (d) it is argued by the learned pleader of Plaintiff that these two notifications did not contain an forfeiture clause as obtained in the notification dated 7th September 1944 and hence the attachment of the stock by Defendant on 8th September 1944 was quite illegal. It is true that the notification in dispute did not contain a forfeiture clause but the Defendant exhibit no.97 explains that he got the stock of Plaintiff attached under Section 96 of the Criminal Procedure Code for the sake of preserving the property found with Plaintiff for the sake of evidence. The Defendant exhibit no.97 terms the stock found out as the Muddemhal meaning thereby the * subject matter of the complaint. The Defendant, exhibit no.97, apprehended tampering with the stock found with the Plaintiff and in order to allay that apprehension he got the stock attached and detained it for furnishing evidence to the Court. I think the Defendant was quite justified in applying to the

*c.p.16.

Sub-Divisional Magistrate to attach the stock found with Plaintiff on 8th September 1944 under Section 96 of Criminal Procedure Code.

18. As regards the last ground covered para 12 clause (e) it is argued by the learned pleader of Plaintiff, that Defendant had no sufficient evidence and did not hold due enquiry regarding sufficient evidence, before filing the complaint. This ground is availed of by Plaintiff as his trump card in this suit. The gist of the Plaintiff's learned pleader's argument on this point is that Defendant took a hasty step and based his complaint on mere suspecious circumstances which were far away from being reasonable and probable. On this point, he has cited Ahmedbhai Vs. Framji, 28 Bombay, 226 and Chaganlal Vs. The President, Thana Municipality, 52 Bombay Law Reporter, 135. The learned pleader of the Defendant has cited Dhanjishaw Vs. Bombay Municipality, 47 Bombay Law Reporter, 304 and Bhaguji Vs. Alandi Municipality, 38 Bombay Law Reporter, 1098, in order to show what preliminary duty a prosecutor is required to perform and how much care he is required to take before launching the complaints. The sum and substance of these rulings is that the prosecutor's belief in the guilt of the accused must be based on grounds which, or some of which are reasonable and arrived at after due enquiry. It is not required of any prosecutor that he must have tested every possible relevent fact before he takes action. All that the prosecutor has to be satisfied about is that there is reasonable and probable cause for the charge meaning thereby reasonable grounds for believing that Plaintiff was guilty of the offence and not reasonable grounds for coming to that conclusion that the Court would convict him of it. Thus we have to see whether the Defendant has taken all precautions for gathering sufficient evidence in order to carry conviction into his heart as regards the commission of the offence at the hands of Plaintiff in contravention of rule 81(2) of the Defence of India Rules. In order to understand this point as clearly as possible, we have to bear in mind the two notifications, exhibits nos. 50 and 51 which were discussed above and the two complaints filed

by the Defendant and the steps he took before obtaining the sanction from the Collector. Unfortunately the * Defendant was labouring under a very difficult position in those -- critical times of rationing. In order to make the rationing system successful, he was pressed by his superior authorit--ies to observe extra ordinary vigilance in checking and verifying the stock of every person and in bringing to books the real offenders who contravened the orders of Government. On 13th April 1944 the District Magistrate issued an order to all Mamlatdars to verify and check the stock of each house-holder and to find out the real culprits and to -- launch complaints against them. The order of the District Magistrate, exhibit no.48, is worth quoting in order to show the great responsibility that was cast upon the -- Defendant by the District Magistrate. It runs as below :-

*o.p.17.

> "The attention of the Taluka and Mahal officers is invited to notification dated 21st December 1944 under which the District Magistrate has ordered that persons holding grains in excess of 25 maunds should declare their stocks. The District Magistrate has noticed that these orders have not been strictly enforced in several Talukas. They are now informed that such relaxation will not be allowed in future on any account. Since proper distribution of food supply to the consuming population who are entitled to it and the success of our rationing order depends so much on the strict enforcement of the order under reference, it is necessary that action is taken -- immediately to obtain such declarations in order to judge the stock position in the District and to -- decide who are entitled to receive food rations.
>
> "Taluka and Mahal officers are requested to take immediate action to enforce the orders in the -- notification and to issue orders to their subor-dinates accordingly. They are also requested to see that these declarations are properly checked and verified by Price Inspectors and Village Officers to the extent of at least 10 per cent so that action may be taken to prosecute those who have made false declarations at test cases."

Pursuant to such orders, it was the natural duty of the Defendant to search the houses of prominent landlords of the town who were expected to possess more stock. On 20th June 1944 the Defendant, therefore, searched more than 20 houses including the house of Plaintiff and found out --

30 bags of paddy and 13 bags of rice held by Plaintiff in his house on his own behalf and on behalf of his relatives -- Annapurnabai and Vithal (Vide Panchanama, exhibit no.109). Thereafter he made a report to the Collector for obtaining sanction against Plaintiff (Vide the order of the Collector, exhibit no.47, dated 29th August 1944). The report made by the Defendant to the Collector for obtaining sanction is not available but the order of the District Magistrate, exhibit no.47, *speaks of the nature of the report made by the Defendant. In this report the Defendant brought to the notice of the District Magistrate the bear facts connected with offences committed by the Plaintiff in not giving the declaration of his stock and in selling rice to private persons without a licence. The Defendant had stated in his report that as regards the offence of non-declaration, there is sufficient evidence to prosecute Plaintiff. As regards the other offence of selling rice without a licence, the Defendant had frankly stated that there was no direct evidence to show that Plaintiff was dealing in rice without a licence, but there was circumstantial evidence to warrant the conclusion. The District Magistrate on these grounds after being satisfied, -- accorded the necessary sanction because, he too was pressed to follow such source by the orders of the Commissioner (Vide -- Commissioner's order, exhibit no.62, dated 16th June 1944). Defendant thereafter filed complaints (Vide exhibit no.43 and 44) stating therein the bare facts. These complaints were got drafted at the hands of the Public Prosecutor as was ordered by the District Magistrate in his order exhibit no.47. In the Complaint, exhibit no.43, regarding the unauthorised sale of rice Defendant had cited 9 witnesses out of whom two are examined by Defendant in this case at exhibit no.103, Vaman Pai and Tippayya, exhibit no.110. In the other complaint, exhibit no.44, regarding the non-declaration of stock and possession of excess stock, the Defendant had cited 5 witness ; out of whom one Shanbhog by name Kaisare has been examined by Defendant in this case at exhibit no.113. The diary of both these cases appears at exhibit no.91. It shows that -- 3 witnesses were examined in each case and the charges were --

*o.p.18

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framed. The charge-sheet of both the cases appears at -- exhibit no.53. Exhibit no.54 is Plaintiff's statement, date 13th April 1945, pleading not guilty to the charge. After the charges were framed, Plaintiff approached the new District Magistrate and represented to him that the compla--ints were baseless and that the cases should be withdrawn. It transpires from the record and it is also explained by the Defendant, exhibit no.97, that the Distric Magistrate in order to favour Plaintiff ordered the with-drawl of the cases without calling for the records from the Sub-Divisional Magistrate's and without ascertaining wheth there was a prima facie case made out by Defendant or not. Exhibit no.42 is the District Magistrate's order, dated 23rd September 1945 according sanction to withdraw the criminal cases. Exhibit no.45 is the Jahiri, dated 29th September 1945, filed by the Public Prosecutor requesting the Court to allow the withdrawl. Before granting sanction to the withdrawl after the charges were framed, it was

o.p.19

proper on the part of the District Magistrate * at lease to call for the record from the lower Criminal Court and to examine it, for finding out the weakness in the cases. But it appears that the District Magistrate took a most hurried and risky step in ordering the withdrawl of the cases -- after the charges were framed, without looking into the record for which I think the Defen-ant is not at fault. The Defendant performed his official duty in checking the -- stock of the Plaintiff's house and bringing him to books as ordered by the notifications of the Collector. The Defendant had also checked the stock of the witness, -- Mr. Bhat, exhibit no.106, and had applied for sanction to prosecute Mr. Bhat also. But the District Magistrate did not accord sanction against Mr. Bhat, exhibit no.106, and accorded sanction against Plaintiff for which, I think, the Defendant cannot be blamed. As regards the first case of non-declaration, it was crystal clear that Plaintiff had committed an offence for possessing an excess stock and

for not declaring it in the first week of June. As regards the other offence for selling rice without a licence, the Defendant had cited 9 witnesses who were going to speak in support of the unauthorised sale of rice by the Plaintiff. Vaman Pai, exhibit no.103, who is employed in Postal Department and Tippayya, exhibit no.110, testify to the sale of rice by Plaintiff through his relative-Vithal- during a long course of period. Thus it is needless to comment that in both these cases there was sufficient evidence collected by the Defendant to carry conviction into his heart that Plaintiff has committed both these offences. It was not the duty of the Defendant at the time of filing these two complaints, to see that the evidence collected by him was quite sufficient to prove the offence to the hilt. The evidence that was collected by Defendant was sufficient in my opinion to create a bona fide belief in the mind of the Defendant to this effect that Plaintiff had really contravened the orders contained in these two notifications and had really committed offence. Beyond -- entertaining such an honest belief in the guilt of the Plaintiff, the Defendant was not required to satisfy himself that the Sub-Divisional Magistrate would at the end convict Plaintiff. Thus, in my opinion, Plaintiff failed to prove hopelessly that Defendant had no probable or reasonable grounds to launch these complaints.

19. In addition to the proof of want of probable or -- reasonable cause, the Plaintiff is required to prove that the criminal proceedings * were initiated in a malicious spirit, that is from an indirect and improper motive, and not in furtherance of justice. Plaintiff is required to prove that Defendant was actuated either by spite or illwill towards him and was filled with a wish to injure him rather than to vindicate the law. In order to prove malice on the part of Defendant Plaintiff is relying upon the following matters :-

*cor. 26-

(a) Cancellation of the gun licence on the report of Defendant and the prosecution of the Plaintiff under the Arms' Act by Defendant.

(b) Mr. Kamath's matter.

(c) Defendant's conduct in checking the stock of rice that was removed by him on the permit exhibit no.52 to Karwar and Ankola.

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(d) The search of the house of Plaintiff on 20th June 1944 by Defendant with the sole object of prosecuting him.

(e) The illegal attachment of the stock on 8th September 1944 in the house of Plaintiff by Defendant.

(f) The complaint of Plaintiff to the Collector against the conduct of Defendant in connection with the cattle epidemic.

I would like to discuss each of these matters singally and try to point out that Defendant did nothing intentionally and maliciously but performed his official duties in the bona fide manner, in handling these matters.

20. ~~(a)~~ Gun Licence matter of Plaintiff:- In this connection the story narrated by Plaintiff, exhibit no.79, is as follows :- Plaintiff held a gun licence but the licence expired in the month of March and he could not renew it as his wife was seriously ill and died at Karwar on 26th April 1944. The Defendant reported the matter to the District Magistrate for the cancellation of his licence and for obtaining sanction to prosecute Plaintiff. Plaintiff's gun licence was cancelled and the prosecution was launched by Defendant against Plaintiff under the Arms' Act. Plaintiff then applied to the Commissioner who ordered the renewal of gun licence. The District Magistrate then ordered the withdrawal of the complaint. The Defendant, exhibit no.97, explains that Plaintiff caused a delay of 5 or 6 months after the expiry of his former licence and hence in the month of August, 1944, he was required to report to the District Magistrate for the cancellation of his licence and his prosecution under the Arms' Act. According to the Arms' Act, as explained by the Defendant, exhibit no.97, Plaintiff was required either to handover the gun to dealer or * to deposit it with the Police Sub-Inspector of Yellapur. It is admitted even by Plaintiff, Exhibit no.79, that the delay of 2 or 3 months was caused by him in not applying for renewal. After the expiry of the prior licence the Plaintiff was obliged to deposit the gun with the Police Sub-Inspector of Yellapur immediately. As he did not do so, it was quite natural on

*c.p.21.

the part of Defendant to report the matter to his superior authorities and to seek sanction for the offence committed by Plaintiff. Plaintiff had every justification to launch the prosecution after the sanction was accorded by the District Magistrate. It does not matter whether the case was withdrawn later on by the District Magistrate and whether the gun licence was renewed by the Commissioner. As the offence was already committed by the Plaintiff, I think the Defendant, as the head of the -- Taluka, would have failed in his duty if he would have slept over the matter. For performance of his official duty though unpleasant it was, Defendant cannot be charged for possessing any malicious feelings towards Plaintiff.

21. (b) Mr. Kamath's matter :- Mr. Kamath was a clerk in Defendant's office. He was transferred to Ankola. Mr. Kamath removed his kit in a motor bus to Ankola. Plaintiff alleges that as a social worker of the town, he reported to the Defendant that Mr.Kamath was carrying more rice than what was allowed to him by the permit and that, therefore, his stock on the way should be checked and verified. The complaint of Plaintiff is that Defendant purposely caused a delay and then wired to the Ankola Mamlatdar to check the stock of Mr. Kamath. Plaintiff's further complaint is that after the checking of the stock, Defendant reported the matter to District Magistrate to the effect that the information given by Plaintiff regarding Mr.Kamath was false and that sanction should be accorded to prosecute the Plaintiff. The District -- Magistrate did not accord the sanction. The Defendant, exhibit no.97, explains that as soon as Plaintiff reported the matter in connection with Mr. Kamath he immediately telegraphed to the Mamlatdar of Ankola to check Mr.Kamath's stock and that after he found the information given by Plaintiff was false, he reported the matter to the District Magistrate and prayed for sanction to prosecute Plaintiff. The Defendant performed his duties promptly on the report of the Plaintiff and I think that no fault lay with the Defendant in reporting the matter to the District Magistrate as the information given by Plaintiff proved to be very false. *O.P.22 The Defendant responded to the request * of Plaintiff as quickly as possible and did not fail to arrange to check the stock of his

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own clerk. This incident does not indicate that Defendant bore any grudge towards Plaintiff.

22. (c) Checking of Plaintiff's stock under exhibit No.52 :- Plaintiff had issued a permit, exhibit no.52, to remove two bags of rice to Ankola and 2 bags of rice to -- Karwar for the maintenance of his school going childred ~~in~~ there. During the transit, the clerk of Defendant reported the matter to ~~him~~ effect that Plaintiff was removing some bags of rice and that it should be checked. The Defendant accordingly checked these stocks that was being removed by Plaintiff and made an endorsement on the permit accordingly. The Defendant further wired to the Ankola Mamlatdar to check the stock of Plaintiff against ~~at~~ Ankola. The Defendant admits the checking of the stock on the way and his telegram to the Ankola Mamlatdar for further checking. Plaintiff ~~also~~ alleges that Defendant checked his stock inspite of the permit because he was filled with spiteful feelings towards him (Plaintiff). I do not think that the extra vigilance displayed by Defendant in checking the stock of Plaintiff and in wiring to the Mamlatdar of Ankola for its further check suggests that Defendant was actuated with any -- malicious feelings towards Plaintiff. Those were rationing days and the Defendant had every stringent orders from his superiors to keep a strict watch on the movements of paddy or rice from one village to another. In obedience to those strict orders, it was the part of the official duty of Defendant to take extra precaution in checking the movements of the stock because it was a common experience of those days that people were accustomed to evade the orders by smuggling cereals from one place to another. The conduct of Defendant in taking extra precautions was quite justified and legal. I do not think that Defendant had gone out of his official duties in checking the stock carried by Plaintiff even though he had issued a permit to carry that stock.

23 (d) The search of Plaintiff's house on 20th June 1944:- I have already stated above that under the orders of District Magistrate the Defendant was required to search the

house of each person in the town in order to verify the stock possessed by him. As per the order of the District Magistrate the Defendant searched the house of the Plaintiff and other 20 houses on the same day. This search could not be deemed to have been made by Defendant under the weight of any malicious feelings towards Plaintiff. If the solitary house of Plaintiff would have been selected by Defendant, there *e.p. 23. would have been some room to doubt the bona fide intention of the Defendant. But in the present case when Defendant searched the house of Plaintiff and other 20 houses on the same day, there is no justified reason for Plaintiff to complain that Defendant did so with illwill towards him.

24.(e) <u>The alleged illegal attachment on 8th September 1944</u> :- On 8th September 1944, the Defendant filed the first complaint regarding the nondeclaration and the possession of the excess stock (Vide exhibit no.44). On the same day the Defendant applied to the Sub-Divisional Magistrate to issue a warrant to attach the stock available in the house of Plaintiff. The Sub-Divisional Magistrate issued the warrant, exhibit no.46, and the warrant was taken by Defendant personally in a motor bus at about 2 P.M. and was handed over to the Police Sub-Inspector for further action. Later on the Police Sub-Inspector attached the stock and found that Plaintiff was in possession of more than 20 bags of paddy (Vide report on the warrant, exhibit no.46).The complaint of the Plaintiff is that Defendant was not justified in issuing the warrant as the notification did not contain a forfeiture clause. Plaintiff further adds that Defendant did so purposely with spiteful feelings and with the intention of dishonouring and harassing him. Issuing of the warrant by the Defendant and the removal of it personally by the Defendant are indicative of the fact, according to the belief of Plaintiff, that Defendant was filled with spiteful feelings towards him. The Defendant, exhibit no.97, explains that though the notifications did not contain a forfeiture clause, he got the stock attached under Section 96 of the Criminal Procedure Code as he apprehended that the subject matter of the complaint was likely to be tampered with by Plaintiff. Under Section 96 of the Criminal Procedure Code the Sub-Divisional

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Magistrate was quite competent to issue a search warrant to preserve the subject matter of the complaint. The Defendant had filed two complaints against Plaintiff, one in respect of the non-declaration of the stock and the other in respect of the unauthorised sale of rice. The Defendant had found out that 20th June 1944 Plaintiff possessed 30 bags of paddy and 13 bags of rice. Plaintiff wanted to prove before the Court that after that above date Plaintiff had sold the rice to private persons. So in order to show that fact it was quite necessary on the part of the Defendant to ascertain the stock possessed by Plaintiff on the date of the filing * of the complaint and also for the sake of the other -- complaint which he intended to file and which he did -- actually file on 26th September 1944 (Vide exhibit no.43). Plaintiff had only 3 sons to support. Apart from the 13 bags of rice which belonged to Annapurnabai and Vithal, the stock that was found with Plaintiff on 8th September 1944 was necessary for proving both offences against Plaintiff. The Defendant wanted to show that Plaintiff held an excess stock without a declaration and also that Plaintiff after leaving a margin for the consumption of rice for Plaintiff and his sons, the latter disposed of a large quantity of rice to private persons without any licence. Besides, Defendant wished that the subject matter of both these complaints should not be tampered with till the disposal of those complaints because the offences were based upon the extent of the stock held by Plaintiff. In my opinion, therefore, as a complainant Defendant was bound to take precautionary measures for piloting his cases successfully to the end. I do not think that Defendant went out of the way in attaching the stock on 8th September 1944. The next complaint of Plaintiff about this very matter is that Defendant willfully opposed his and other Plaintiff's application for the -- release of the attached stock with spiteful feelings. Plaintiff in this case and Plaintiff in the other case applied to the Sub-Divisional Magistrate for the release of their --

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attached stock (Vide exhibits nos. 58 and 59). The Sub-Divisional Magistrate rejected the application (Vide order on exhibit no.59). Plaintiff appears to have applied to the District Magistrate in this connection. The District Magistrate then sought the opinion of the Public Prosecutor and it is explained by the Defendant that the Public Prosecutor opposed the application of Plaintiff and Vithal of his own accord as he was bound to do, without even consulting him. As Defendant was the complainant, it was quite right on his part to preserve the subject matter in tact in the custody of the Court till the disposal of the Complaint. There is nothing wrong on the part of the Public Prosecutor to oppose the applications even supposing for argument's sake that the Public Prosecutor was instructed by the Defendant to do so. I do not think that the opposition of Defendant through the Public Prosecutor if any, would go to show that he was filled with any spiteful feelings towards Plaintiff. The Defendant as a complainant was bound to take all precautionary measures allowed by law to him. Defendant's conduct cannot, therefore, be characterised as malicious.

25. (f) Cattle epidemic matter:- The stand of Plaintiff in connection with this matter is that he complained against Defendant to the Collector for the latter's negligence in not making speedy arrangement in despatching a veternary docter to check the cattle epidemic. For this purpose, Plaintiff has produced two telegrams, exhibit no.69 is the telegram dated 13th May 1944 despatched by Plaintiff to the Collector to arrange for a veternary docter at Yellapur as the cattle disease had relapsed. Exhibit no.70 is the telegram despatched by the Collector to the Veternary docter of Haliyal to proceed to Yellapur immediately. A copy of this telegram was sent to Defendant by the Collector to state as to how he failed to report the cattle disease. The Defendant, exhibit no.97, explains that in the month of April 1944, the cattle disease broke at Yellapur and he immediately made arrangement for the docter. But the disease relapsed in May 1944. The Defendant as a Mamlatdar has got a lot of touring duties and it appears that the relapsed cattle disease escaped his attention. There is nothing in the telegram, exhibit no.69, of Plaintiff that Defendant refused to make speedy arrangement on being told personally. Plaintiff was

c.o.p.25.

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a social worker and it is quite natural that he should have communicated this matter to the Collector directly in order to show that he was performing a social work. As there is no comment against the conduct of Defendant in the telegram exhibit no.69 of Plaintiff, I do not see any -- reason why Defendant should feel if the matter was taken directly by Plaintiff to the District Magistrate. This incident I do not think was sufficient to kindle feelings of hatred in the hearts of Defendant towards Plaintiff.

The dicussion of all the above matters would lead to an irresistible conclusion that Plaintiff failed to prove the malice on the part of Defendant as required by law. My findings on issues nos. 3,4,5 and 6 accordingly.

26. Issues nos. 1 and 2:- We have marked above that Defendant launched the complaints in good faith and did that in pursuance of the Defence of India Act and rules made thereunder. The Defendant did not exceed the limit prescribed by the rules framed under the Defence of India Act. So under Section 17(1) of the Defence of India Act this suit and the other suit are not tenable at all. My findings on issues nos. 1 and 2 are accordingly.

27. Issues nos. 7,8 and 9:- Plaintiff has claimed Rs.1,000/- as damages. The learned pleader of Plaintiff relies upon Alexander • Vs. Indrakrishna, 60, Calcutta, 918. It is observed in the above case that Plaintiff is entitled to a decree on the basis of general damages which will be presumed by law and that it is not necessary in order to succeed in an action, for malicious prosecution for the Plaintiff, to prove that he has suffered any -- special pecuniary loss through the conduct of Defendant. Plaintiff is a landlord of Yellapur and is a social worker. Plaintiff, exhibit no.79, was appointed as a social worker of Yellapur by the District Magistrate (Vide exhibit no.64, dated 4th March 1939). Plaintiff was a member of the -- District Local Board then and a member of District -- Recruiting Committee and a member of District Rural

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Development Board and Food Advisory Committee and District Forest Advisory Committee. He was Taluka leader in National War Front. Exhibit no.63 is the letter, dated 2nd November 1945, of the Collector to Plaintiff giving thanks to him for war efforts and recruiting. Exhibit no.65 is a copy of the proceeding showing that Plaintiff was a member of the Forest Advisory Committee. Exhibit no.66, dated 30th July 1942, is the letter from the District Magistrate to Plaintiff giving him -- thanks for agreeing to organise National War Front. Exhibit no.67 is the Government Resolution appointing Plaintiff as the Registrar's nominee. Exhibit no.68 is the Visit Book of Telgeri Village Improvement Committee containing certificates of the Commissioners and other officers regarding the village improvement work done by -- Plaintiff. The above is the white side of Plaintiff. But at the end of the cross examination of Plaintiff, some questions were asked by the Defendant's learned pleader in order to show the back-blagk side of Plaintiff. Plaintiff has admitted that he had -- complained on sufficient grounds against several police Inspectors, Forest Officers and other Government servants. Plaintiff succeeded in few complaints and failed in majority of them. Having regard to these both sides of Plaintiff, I am inclined to grant him damages of Rs.100/- only provided he would have succeeded on issues nos. 3 to 6.

28. As Plaintiff fails hopelessly, I pass the following order.

O r d e r.

29. Suit is dismissed. Plaintiff to pay the cost of Defendant and bear his own.

29th October 1948. Sd. N. V. Ransubhe,
Civil Judge, Senior Division.

Suits:
Kanara.
For Rs. 1,000 as damages for the alleged malicious prosecution and for contending that the part of the stocks of rice and paddy found in the Plaintiff's house belonged to them.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 11957.
Bombay Castle, 16th December 1948.

Read Government Resolution, Legal Department No. 7502, dated the 21st July 1947.

Letter from the District Government Pleader, Kanara, No. 591, dated the 25th November 1948, stating that the suits Nos. 1 & 3 of 1947 noted in the margin were decided by the Civil Judge, Senior Division, Karwar, on 29th October 1948, when the following order was passed in each of the suits :-

In the Court of the Civil Judge, Senior Division, Karwar Civil Suit No. 1 of 1947. Anant Ramabhat Yellapurker... Plaintiff vs. The Mamlatdar of Sirsi .. .. Defendant. Claim Rs. 1,000.
Civil Suit No. 3 of 1947. Vithal Sadashiva Deonalli .. .Plaintiff. vs. The Mamlatdar of Sirsi .. .. .Defendant. Claim Rs. 100.

" Suit is dismissed. Plaintiff to pay the costs of Defendant and bear his own."

and, forwarding uncertified copies of the judgments.

RESOLUTION:- The result of the suits is recorded.

By order of the Governor of Bombay,

Original

K. J. Pathare.
Addl. Assistant Secretary to Government.

To
The Home Department,
The Commissioner, Southern Division,
The Collector of Kanara.

Submitted for sign Orders at P.

Issued
7BM.
10.12.

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From

The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs,
Bombay.

No. 766 of 1950. 17-10-1950

Sir,

I have the honour to inform you that Civil Appeal No. 2-1949 filed by Shri A.R.Yellapurkar against R.S.Naik, Ex-Mamlatdar of Yellapur claiming damages of Rs.1000/- has been [redacted]d with costs.

Yours faithfully,

Dist.Govt.Pleader, Kanara, Karwar.

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DSP's letter overleaf may please be seen.

It is submitted for information We had not sanctioned the defence of the said appeal. The defence of the said appeal may be filed in S. Kan 1/48

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Sup 25.10.

S Kan 1/48

26/10

Letter.
From

B. S. Mavinkurve, Esquire,
Public Prosecutor, Karwar.

To

The Remembrancer of Legal Affairs,
Bombay.

No. 533 of 1948. Date: 8 - 11-1948.

Sir,

Under rule 80 of the Law Officers' Rules I have to report that the following 2 suits in which I was appointed to defend the defendant have been dismissed and thus the defendant has succeeded. His costs have been awarded. The Judgment was delivered on the 29th ~~instant~~. Copies of the Judgment and decree will follow as required by rule No. 81.

1/48

O.S.No. 1-1947 (A.R.Yellapurkar Vs. R. S. Naik Mamlatdar of Yellapur.)

O.S.No. 3-1947 (Vithal Devanalli Vs. do-

Yours faithfully,

District Government Pleader
and Public Prosecutor, Karwar.

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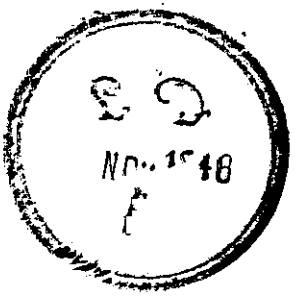

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Subd. for information
2 copies of judgment & decree
may be annexed.

Ajit
11/4

A.A.S. 11/11

Sahai

The Results of the Suits are
Recorded

Sd/- S. Kanera 11/48

SB
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S.S. NB
15.5.